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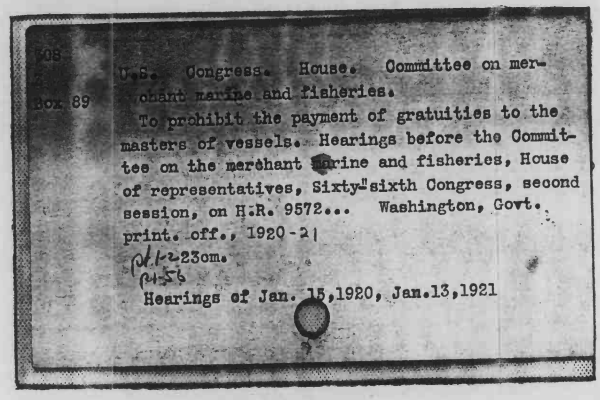

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U.S. Congress. House. Committee on merchant marine and fisheries.
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Part 1

TO PROHIBIT THE PAYMENT OF GRATUITIES TO THE MASTERS OF VESSELS

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HEARINGS

BEFORE THE

COMMITTEE ON THE MERCHANT MARINE AND FISHERIES

HOUSE OF REPRESENTATIVES

SIXTY-SIXTH CONGRESS
SECOND SESSION

ON

H. R. 9572

THURSDAY, JANUARY 15, 1920

WASHINGTON
GOVERNMENT PRINTING OFFICE
1920

COMMITTEE ON THE MERCHANT MARINE AND FISHERIES.

HOUSE OF REPRESENTATIVES.

SIXTY-SIXTH CONGRESS.

WILLIAM S. GREENE, Massachusetts, *Chairman.*

GEORGE W. EDMONDS, Pennsylvania.	RUFUS HARDY, Texas.
FREDERICK W. ROWE, New York.	EDWARD W. SAUNDERS, Virginia.
FRANK D. SCOTT, Michigan.	PETER J. DOOLING, New York.
WALLACE H. WHITE, JR., Maine.	LADISLAS LAZARO, Louisiana.
FREDERICK R. LEHLBACH, New Jersey.	DAVID H. KINCHELOE, Kentucky.
SHERMAN E. BURROUGHS, New Hampshire.	WILLIAM B. BANKHEAD, Alabama.
CHARLES F. CURRY, California.	W. C. WRIGHT, Georgia.
EDWIN D. RICKETTS, Ohio.	
CARL R. CHINDBLOM, Illinois.	
FRANK CROWTHER, New York.	
CLIFFORD E. RANDALL, Wisconsin.	
WILLIAM N. ANDREWS, Maryland.	

RENE G. DE TONNANCOUR, *Clerk.*

DEP 21 Apr 1921

TO PROHIBIT THE PAYMENT OF GRATUITIES TO THE MASTERS OF VESSELS.

COMMITTEE ON THE MERCHANT MARINE AND FISHERIES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Thursday, January 15, 1920.

The committee met at 10.30 o'clock a. m., Hon William S. Greene (chairman) presiding.

The CHAIRMAN. We will take up this morning a bill introduced by Congressman Miller, of Washington, H. R. 9572, entitled "A bill to prohibit the payment of gratuities to masters of vessels, or other persons, for the purpose of inducing or securing contracts for repairing vessels or furnishing vessels with supplies or other necessaries."

[H. R. 9572.—66th Congress, 1st session.]

A BILL To prohibit the payment of gratuities to the masters of vessels, or other persons, for the purpose of inducing or securing contracts for repairing vessels or furnishing vessels with supplies of other necessities.

Be it enacted, etc., That from and after the passage of this act it shall be unlawful for the master of any vessel, or other persons, having authority to contract for repairs, supplies, or necessaries for any vessel, to receive or solicit, directly or indirectly, any commission, bonus, gratuity, sum of money, or other thing of value, for the purpose of inducing the making or placing of any contract, express or implied, for repairs, supplies, or necessaries for any vessel, or the use of any dry dock or marine railway facilities for any vessel; and whoever shall receive, solicit, offer, give, or pay, directly or indirectly, any such commission, bonus, gratuity, sum of money, or other thing of value, for the purposes aforesaid, shall be deemed guilty of a misdemeanor and shall upon conviction be punished by a fine of not less than $1,000 and of not more than $5,000, or by imprisonment for not less than 6 months and not more than 12 months, or both.

STATEMENT OF HON. JOHN FRANKLIN MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON.

Mr. MILLER. Mr. Chairman and gentlemen of the committee, one week ago to-day this bill came on for hearing before the committee, and upon my application it was adjourned until to-day in order that some gentlemen might be present to give the committee the benefit of their knowledge of the matters the bill is intended to correct. There are some of the gentlemen present to-day whom I would like to have state before the committee their estimates of the merits of the bill. The bill was introduced at the special instance of Mr. D. E. Skinner, of Skinner & Eddy, large shipbuilders at Seattle. Mr. Skinner is in the East, but will be unable to be here until to-morrow, and I ask that the committee give him an opportunity to

be heard when he arrives. He got the date confused. He is in Philadelphia to-day. The firm of Skinner & Eddy, of Seattle, is one of the largest, if not the largest shipbuilders on the Pacific coast, and having large dry docks.

The CHAIRMAN. We will have a meeting to-morrow on another question and we will give him half an hour if that will be sufficient.

Mr. MILLER. Very well.

Mr. HARDY. Let me ask that you state briefly just what the purpose of the bill is?

Mr. MILLER. The bill is very short. It is to prohibit the payment of gratuities. It reads:

To prohibit the payment of gratuities to the masters of vessels, or other persons, for the purpose of inducing or securing contracts for repairing vessels or furnishing vessels with supplies or other necessaries.

Be it enacted, etc., That from and after the passage of this act it shall be unlawful for the master of any vessel, or other persons, having authority to contract for repairs, supplies, or necessaries for any vessel, to receive or solicit, directly or indirectly, any commission, bonus, gratuity, sum of money, or other thing of value, for the purpose of inducing the making or placing of any contract, express or implied, for repairs, supplies, or necessaries for any vessel, or the use of any dry dock or marine railway facilities for any vessel; and whoever shall receive, solicit, offer, give, or pay, directly or indirectly, any such commission, bonus, gratuity, sum of money, or other thing of value, for the purposes aforesaid, shall be deemed guilty of a misdemeanor.

Mr. CHINDBLOM. The punishment is a $1,000 fine?

Mr. MILLER. Yes. "* * * and shall upon conviction be punished by a fine of not less than $1,000 and of not more than $5,000, or by imprisonment for not less than six months and not more than twelve months, or both."

I know, from my own experience, very little about this. Although I have lived in a seaport town all of my mature life, I know very little about the facts the bill is supposed to remedy, but there are gentlemen here who can state them, and I would also like to introduce a number of letters I have received.

Mr. CHINDBLOM. Just one question with reference to the form of the bill. I presume it is not necessary to state anything in the bill with reference to the enforcement of the act. I presume it will be enforced as any other of the penal statutes of the United States, there being no special provision in it.

Mr. MILLER. I would presume so.

Mr. HARDY. As it is worded, there would just be a complaint filed and prosecution instituted on such complaint.

Mr. MILLER. The same as any other criminal offense.

The CHAIRMAN. I suppose it has been a common practice for masters of vessels to do just exactly what you seek to prevent?

Mr. MILLER. I think the testimony will show that, and it is alarming to me. Since gentlemen who are engaged in the shipping business have told me the practices, it is really alarming and astounding that such a practice has gained even a recognition, but it has.

The CHAIRMAN. I ran into one establishment in my own city where a captain made a contract for groceries to be supplied to a vessel at one of the Shipping Board docks or yards, and he called on the grocer to advance him money, and he did so. The man who supplied the groceries supposed it was customary from what the captain told him, and he paid the money, and then the Shipping

Board made the captain give it up and said they did not allow anything of the kind. They insisted upon the master giving up the money that had been paid to him and the grocer got his money back. That is the only case I have any knowledge of in my own experience, and the Shipping Board settled with him.

Mr. MILLER. A number of letters have come to me commending the bill, which I desire to file for the record.

(The letters referred to are as follows:)

VALENTINE & Co.,
New York, December 18, 1919.

Hon. JOHN F. MILLER,
Washington, D. C.

DEAR SIR: We heartily approve of your House Bill H. R. 9572, but trust it will be amended to include other industries as well.

Very truly, yours,

VALENTINE & Co.,
N. T. TULSIFER, *President.*

PATTON PAINT Co.,
Milwaukee, Wis., October 13, 1919.

Hon. JOHN F. MILLER,
House of Representatives, Washington, D. C.

DEAR SIR: We have just received copy of your bill, H. R. 9572, and take this opportunity of assuring you of our support. We believe that your bill is a step in the right direction and that it will abolish some of the pernicious practices now existing in what is known as the marine trade.

We trust nothing will come up to prevent the passage of this bill.

Your very, truly,

LUDINGTON PATTON, *President.*

THE DEBEVOISE Co.,
Brooklyn, N. Y., October 14, 1919.

Hon. JOHN F. MILLER,
House of Representatives, Washington, D. C.

DEAR SIR: The House Bill 9572, which you have introduced in connection with gratuities given to persons on vessels of the merchant marine, has my very full approval. During many years it has been my privilege to be brought in contact with a very fine class of people connected with dry docks, lighterage concerns, and the merchant marine, and their giving of gratuities has during that time become pronounced in spite of the better principles of most of these people. Such a bill as you have introduced will have the effect of decidedly curbing this propensity.

Respectfully, yours,

GEORGE DEBEVOISE.

THE O'BRIEN VARNISH Co.,
South Bend, Ind., December 23, 1919.

Hon. JOHN F. MILLER,
House of Representatives, Washington, D. C.

MY DEAR CONGRESSMAN MILLER: I have just read with special interest a copy of your bill No. 9572, dealing with the subject of grafting in the shipbuilding industry, and I express to you my gratification in learning that this subject is of such serious concern to you.

This condition which evidently exists in the shipbuilding industry has likewise existed in the varnish and paint lines, and from the fact that we have absolutely refused to participate in these practices we have during these past years suffered the loss of a lot of business which would otherwise have been available to us.

The Federal Trade Commission have made an effort to stop the practices so far as the varnish and paint business is concerned, and they have made good progress; but there is still a lot of it going on, and I believe that this sort of thing can be eliminated totally only as a result of the passage of such laws as will make the practice a criminal offense.

If I might make a suggestion in the matter, I would like to express the hope that your bill will be so changed as to cover all lines of commercial activity; and I further suggest that my observation leads me to believe that the punishment for an offense of this kind should be imprisonment rather than optional as to a fine or imprisonment. I do not believe that the risk of having to pay a fine, even if it is a large one, is going to stop a lot of people from continuing in the practice. I hope that the measure will go through.

With my very best regards to you, I am,

Yours, very truly,

W. D. O'BRIEN.

VALENTINE & Co.,
New York, October 14, 1919.

Hon. JOHN F. MILLER,
House of Representatives, Washington, D. C.

DEAR SIR: Permit us to express our approval of House of Representatives bill 9572, introduced by you on the 27th ultimo.

We are thoroughly in sympathy with the object aimed at, and only wish that the bill could be so framed as to apply not alone to "those having authority to contract" but to all receiving or soliciting gratuities of any kind in connection with the furnishing of supplies for vessels.

Respectfully, yours,

A. L. PHILLIPS,
Secretary and Treasurer.

NATIONAL VARNISH MANUFACTURERS' ASSOCIATION,
Cleveland, Ohio, October 15, 1919.

Hon. JOHN F. MILLER,
House of Representatives, Washington, D. C.

DEAR SIR: I recently had an opportunity of looking over the bill which you introduced, H. R. 9572. I am heartily in accord with the spirit of this bill, but I desire to call your attention to the fact that the provisions of the bill ought to apply not only to those "having authority to contract," etc., but it ought also to apply to any of those who "approve materials to be purchased."

I wish to explain that as president of the Varnish Manufacturers' Association I am very keenly interested in any legislation which will tend to put an end to the pernicious custom of giving commissions, bonuses, or gratuities to employees.

Yours, truly,

ADRIAN D. JOYCE, *President.*

R. N. NASON & Co.,
San Francisco, Calif., October 20, 1919.

Hon. JOHN F. MILLER,
House of Representatives, Washington, D. C.

HONORED SIR: We notice you have placed into the House bill H. R. 9572, which bill we believe we should advise is one that we are glad to learn has been introduced, as we believe it will be the correction of certain evils that have crept into the merchandise business through long usage, which is incorrect to mankind.

Yours, respectfully,

R. N. NASON & Co.,
Per R. N. NASON, *President.*

W. P. FULLER & Co.,
San Francisco, October 16, 1919.

Hon. JOHN F. MILLER,
House of Representatives, Washington, D. C.

DEAR SIR: Our attention has been called to H. R. 9572, introduced by you, to prohibit the payment of gratuities, etc., and we beg to express our entire approval of the bill and our hope that it will be passed.

The practice which this bill intends to prohibit has been quite a serious abuse, and, while we think it has not been as common of late, it should be entirely stopped.

Very truly, yours,

W. P. FULLER & Co.

BASS-HUETER PAINT Co.,
San Francisco, Calif., October 20, 1919.

Hon. JOHN F. MILLER,
House of Representatives, Washington, D. C.

DEAR SIR: We wish to go on record as supporting your bill, H. R. 9572, and sincerely trust that it will be passed. It is certainly a move in the right direction.

Very truly, yours,

BASS-HUETER PAINT Co.,
By H. T. JAMES,
Vice President and General Manager.

SAMUEL CABOT (Inc.),
Boston, Mass., October 17, 1919.

Hon. JOHN F. MILLER,
House of Representatives, Washington, D. C.

DEAR SIR: Our attention has been called to House bill 9572, introduced by you and intended to stop the bribery connected with the repairing and supplying of vessels.

We had an experience several years ago where the captain of the vessel superintending repairs upon it passed overcharges to a considerable amount and was paid 25 per cent of the overcharge.

We, therefore, hope that your bill will have favorable consideration so that these practices can be stopped.

Very truly, yours,

SAMUEL CABOT (Inc.),
MARCH G. BENNETT,
General Manager.

CHICAGO VARNISH Co.,
Chicago, October 13, 1919.

Hon. JOHN F. MILLER,
House of Reprcsentatives, Washington, D. C.

DEAR SIR: We beg to advise you that we strongly favor the object of the above bill which you have introduced. We hope it will be enacted into legislation, as we feel it will accomplish a good purpose.

Yours, very truly,

CHICAGO VARNISH Co.,
A. C. MORGAN,
General Manager.

STATEMENT OF MR. H. C. DONALDSON, OF NEW ORLEANS, LA., PRESIDENT OF THE ASSOCIATION OF SHIP STORE DEALERS OF THE PORT OF NEW ORLEANS.

Mr. EDMONDS. What is your business, Mr. Donaldson?

Mr. DONALDSON. My business is ship chandlery business and mill supplies. I would like to state this association of ship store dealers was organized January 1, 1919, under orders of the Food Administration. One of its chief purposes is the elimination of commercial bribery as applying to the ship-supply business and to correct any abuses pertaining to that branch of the trade.

I find the conditions as pertaining to the ship-supply business particularly deplorable, so far as the masters of foreign vessels are concerned, and, in many instances they exact the commissions before they will do business.

Mr. BANKHEAD. Just tell us what system they use that you are seeking to correct by this bill.

Mr. DONALDSON. They solicit commissions of such and such a percentage of the bill—5 per cent, say.

Mr. BANKHEAD. You mean by that, the master of the foreign vessel or domestic vessel who gets supplies will go to some merchant who is handling ship supplies and tell him, if he will give him a certain commission or gratuity, he will place his ship with that concern. Is that the proposition?

Mr. DONALDSON. That is practically what occurs; yes. This is a practice that has been going on, as I understand, for years and years.

The CHAIRMAN. That is what I was going to inquire. How long has it been going on?

Mr. DONALDSON. Oh, it is an international affair; I am satisfied you will find that. You can get all the information you require from the different industries engaged in this business; but as far as American ships are concerned—I am only speaking from personal experience—we have practically no trouble at all. The influence of the Shipping Board in supervising the purchases for the vessels under their control has been a wonderful influence in cutting out this commercial bribery or so-called commissions paid to officers of ships.

Mr. CHINDBLOM. What was the condition with reference to American vessels before the Shipping Board owned and operated ships?

Mr. DONALDSON. The conditions were not so good as they are at present. It was being done more or less before the Shipping Board took control.

Mr. CHINDBLOM. Was it at all universal?

Mr. DONALDSON. I am not in a position to say whether it was universal or not. I can state from personal experience that I have had such experience, yes, before the Shipping Board took control.

Mr. LAZARO. Would they leave it to you to state the amount, or would they ask for such and such an amount?

Mr. DONALDSON. It was a general practice, understand, all over the country, to pay 5 per cent or whatever was specified. It was universally understood by everybody engaged in the business that the master expected a 5 per cent commission. It was an open secret with them in many cases. They simply said, "We get it at every other port; why can we not get it in the American ports?"

Mr. BANKHEAD. On whom did the loss fall?

Mr. DONALDSON. The loss is passed to the consumer in the long run; the owner.

Mr. LAZARO. They are not much concerned with prices, then?

Mr. DONALDSON. Not so much concerned with prices as long as the master gets his commission. As I say, you can talk to the masters themselves of foreign vessels.

Mr. LAZARO. They started this practice, did they not, without being encouraged?

Mr. DONALDSON. I really do not know how it started; it has been going on from time immemorial.

Mr. HARDY. It is just human nature.

Mr. WHITE. Take the vessels going to New Orleans. Is the practice as general on the American vessels as it is on the foreign vessels going there?

Mr. DONALDSON. Not from my own experience; no, sir; it is not.

Mr. EDMONDS. It was before the Shipping Board came in with their vessels?

Mr. DONALDSON. Before the Shipping Board obtained control it was being done; but I want to say it was not as general as it applies to the foreign vessels, for this reason, that the owners of your American vessels are where you can reach them by letter or personal visit. Your foreign owners are scattered all over creation. They leave the purchasing of the supplies to the master. In many cases the American owners do not do that; they place the orders through the purchasing department, and in that way the masters do not place the order.

Mr. CHINDBLOM. That is because they are in this country, is it not; if they were in a foreign port I presume the masters of the American ships would have about the same authority, would they not?

Mr. DONALDSON. I really do not know; I could not answer that.

Mr. BANKHEAD. Have not the owners of vessels any method of checking up and stopping that practice themselves?

Mr. DONALDSON. I am not in a position to say what foreign owners do in regard to it.

Mr. BANKHEAD. I mean any American owners could?

Mr. DONALDSON. Yes; they could check it up from the bills.

Mr. HARDY. How could they check it up from the bills?

Mr. DONALDSON. From the invoices.

Mr. LAZARO. Do these commissions that they get show on the invoices in any way?

Mr. DONALDSON. I do not think so. I do not know how you could check it up. The matter is handled in so many different ways; they get money, and it is a cash transaction with the master.

Mr. HARDY. Did I not understand you to say you had run across the practice yourself in your own business?

Mr. DONALDSON. I have had personal experience myself where it has been requested, but where I have declined.

Mr. HARDY. You have not given the commission?

Mr. DONALDSON. No, sir; I have not given the commission.

Mr. WHITE. What regular lines of American vessels run in and out of New Orleans?

Mr. DONALDSON. What regular lines?

Mr. WHITE. Yes.

Mr. DONALDSON. The Shipping Board have so many different lines. I could mention dozens of them.

Mr. WHITE. Is this practice indulged in by masters of Shipping Board vessels?

Mr. DONALDSON. No, sir; not to my knowledge.

Mr. WHITE. Do you know of any particular lines of American vessels, where the masters engage in it?

Mr. DONALDSON. No, sir; I can not give you any at this time.

Mr. WHITE. So that you do not know of any American line running in and out of New Orleans where the master of the vessel takes this commission?

Mr. DONALDSON. Not from my own personal business, you understand. I do not know whether they accept or receive it from others, or not.

Mr. LAZARO. You said you did not give them any commission; that you refused to do so?

Mr. DONALDSON. Yes, sir.

Mr. LAZARO. Were you ever asked by masters of American ships since the Shipping Board has been operating the vessels, to give this commission?

Mr. DONALDSON. Not that I know of.

Mr. BANKHEAD. Have you been approached for that concession by the masters of any foreign vessels, within the last few months or a year?

Mr. DONALDSON. Yes, sir.

Mr. CHINDBLOM. How is the transaction handled by the merchant? A master or a representative of a master comes to the merchant and wants to buy, say, $500 worth of supplies; he expects a commission of 5 per cent. Does the merchant then make his price accordingly, so that he will come out whole, or does he lose the 5 per cent commission on the sale?

Mr. DONALDSON. I can not answer how that is handled. It is reported in our association that it is handled as a cash transaction. It is a difficult matter to trace this practice as applying to individual concerns, because there are so many ways to get around it. It may be a question of short weight and the master gets the difference, or it may be a substitution of a lower quality for a higher quality of goods. It may be added on to the bill in some way or other.

Mr. EDMONDS. It may be a question of short sending of the goods, too?

Mr. DONALDSON. Yes, sir.

Mr. EDMONDS. For instance, a man buys six dozen of something and gets five dozen and he gets the money out of that?

Mr. DONALDSON. They may order a coil of rope and raise the weight on it; the master approves the bill and it is paid. There are a number of different ways they can get around it if the master wants to do it.

Mr. BANKHEAD. Do you not think it would be very difficult to make proof of the violation of this statute because of those evasions and substitutions to cover the transaction? Do you think a grand jury could get the facts in a case of that sort?

Mr. DONALDSON. I think they could, a jury of the Federal Government; yes, sir.

Mr. BANKHEAD. I mean the Federal grand jury.

Mr. DONALDSON. Yes; the Federal grand jury. The influence of a Federal law is of far greater value in suppressing this thing, in my opinion, than a State law. They will observe a Federal law, perhaps, more fully than a State law. That is why I am so anxious to see some such law as the Miller bill go through. All I am here for is to try to get this business done on its merits, where price, quality, and quantity are considered.

Mr. ROWE. Do you find in New Orleans that certain business concerns do a large business because of the commissions they pay?

Mr. DONALDSON. I am under the impression they do. I will make the statement here that masters of some of the ships will place their orders with anybody, regardless of whether he has any stock or not, or carries any stock, if he gets his commission. The masters of these foreign vessels figure that is part of their compensation. As I say, it is an open secret with them.

Mr. CHINDBLOM. In the enforcement of this law, as a matter of fact, will it not be likely, in fact, almost universal, that the prosecutions will have to be directed against those who pay these gratuities rather than against those who receive them, because of the difficulty of prosecuting the master of a foreign ship or anybody coming from his crew?

Mr. DONALDSON. I do not know whether it can be done or not, but you would have to make the law apply to the one giving the commission the same as to the one receiving it——

Mr. CHINDBLOM. This law does.

Mr. DONALDSON. For this reason: These masters will exact that commission from suppliers, and if they do not get it they will go to some other port. Now, if you do not prevent the master from accepting it, it would be within his power to do that, would it not—he could go to some other port, Cuba or Habana, or some other country and buy his supplies?

Mr. CHINDBLOM. The bill proposed by Congressman Miller covers both the giving and receiving of gratuities.

Mr. DONALDSON. Yes, sir.

Mr. CHINDBLOM. As a matter of fact, is it not going to be practicably impossible to prosecute the master of a ship which happens to be in the port of New Orleans, or a member of the crew representing a master? Will not the prosecutions have to be directed principally against those who give the gratuities and pay these commissions—our own people who give these gratuities?

Mr. DONALDSON. I could not answer that question. I do not know how the law could be made to apply to foreign masters. As I say, it is an international affair.

Mr. BANKHEAD. If they were masters of regular vessels that called regularly at that port, it would not be so difficult because they could get them when they came back. But the master of a tramp steamer who just comes in for one trip and then goes off for good, it would be practically impossible. On a regular line, it would not be so difficult.

Mr. ROWE. When you make both the receiver and the giver of the bribe liable you have great difficulty in getting the evidence to prove your case.

Mr. DONALDSON. It is difficult, there is no question about that.

Mr. ROWE. So a good many of the States in the Union have arranged to hit one and let the other man free, in order to get the evidence. In this case, this bill makes both liable and you will have very great difficulty in getting the evidence to convict them.

Mr. HARDY. Still, under all the principles of common law, a man who induces another party to commit a crime is himself guilty of the offense.

Mr. ROWE. There is no doubt about that.

Mr. HARDY. So that the man asking a commission and receiving it is particeps criminis on all principles of common law.

Mr. ROWE. Yes; but there are a great many concerns doing business with ships now that furnish the things and say nothing about the payment of a commission, but they always give a commission. And that passes from master to master of vessels that are coming into the different ports and they know who to deal with in order to see that they get a commission.

Mr. DONALDSON. Yes, sir.

Mr. ROWE. And they get a commission in that way. It is frequently true it is forced on the officer of a vessel, because it is paid

without a word ever being said, in some indirect way, and it is a very difficult thing to get at. That is something we must legislate for and must break up.

Mr. DONALDSON. Yes, sir; I hope so.

Mr. HARDY. Would it not be easier, if we are going to pass this kind of legislation—the only way you would get the proof is by examining the books, and if the merchant doing this business had to present books for investigation, it would be disclosed in some way. They sell a stock of goods for $500 and the account rendered to the owner of the ship who gets the stock of goods is all right on its face, and then the master gets a commission of 5 per cent, $25, on that. Now, in the bookkeeping account of that firm that thing would be disclosed somewhere.

Mr. ROWE. Very often it is not. Very frequently they sell, for instance, 100 tons of coal, and deliver 90, and the books show 100 tons of coal delivered.

Mr. CHINDBLOM. Perish the thought, in the coal business.

Mr. ROWE. Yes; and it is true of all other supplies, I guess?

Mr. DONALDSON. Yes.

Mr. HARDY. Unquestionable, in the coal business, it seems to me that the credits of the concern, the establishment that makes the sale, would show in its cash coffers the receipt of less money than the account to the shipowner showed had been received if part of that money went to a grafter.

Mr. CHINDBLOM. After it becomes a crime, you do not expect it to show on the books, do you?

Mr. HARDY. I do not see how it could help appearing on the books, because the concern has to settle with its stockholders.

Mr. LAZARO. Suppose they get it in the weight?

Mr. DONALDSON. Suppose they handle it through the expense account; suppose they advance a clerk's salary. They may advance a clerk's salary to take care of that—may show that extra compensation for his services, and that clerk would take that and give it to the master.

Mr. CHINDBLOM. I am not well versed in crime, but I can see very well how a man could sell 100 tons of coal to a ship, take out 10 tons and have it delivered somewhere else and take that money and deliver it to the master, and it would never appear on the books.

Mr. DONALDSON. No, sir; and the bill goes in for the full amount, and the owner pays the full amount, and the master gets the difference.

Mr. EDMONDS. I can tell you exactly how it works out and probably could be followed up. As a general thing, in the coal business, in these tramp ships, it is handled by a runner who carries his office pretty well in his pocket.

Mr. DONALDSON. Yes, sir.

Mr. EDMONDS. He is a responsible man and buys coal of a concern and he gets a bill of lading at the shipping point for 200 tons of coal. Then he has his own bill of lading and he fills out a bill of lading, in his own name, for 300 tons of coal, and the captain signs for 300 tons of coal although he only gets 200 tons of coal. It would be very easy to find out from the original bill of lading from the company loading the coal and would be easy to find out that the boat went out from there with only 200 tons of coal although the captain signed for 300 tons of coal. That is the way the coal business has been done for years. It is not so bad to-day as it was 30 years ago, but 30 years ago it was absolutely the custom to do the coal business with the cargo boats in that way.

Mr. BANKHEAD. Did not the owners of those ships exercise any diligence?

Mr. EDMONDS. The owners recognized it for a number of years and tried to get around it in a number of different ways. Most of the English and foreign ships coming into these ports, and at least the English, formed those big shipping lines, assigning some of them 150 cargo vessels under one agent, and they required this agent to make a contract at every port where their ships went for coal with a responsible dealer and not have anything to do with the runner, and the captain had nothing to do with the ordering of the coal. The agent simply would wire ahead, "Our ship so-and-so will be at your port such and such a date and wants so much coal." The responsible dealer would load that coal and put it on the ship and forward the bill of lading to the office in London, not to the office here, and would not give it to the captain. He would simply get it signed. Before that, any knockdown made on it was simply divided between the captain, the ship runner, and the chief engineer. It is in very much better shape to-day than it has been for years on account of the handling of this thing by the large agents; but before that it was pretty bad, and it still goes on to some extent, I presume.

Mr. DONALDSON. Yes, sir; there is some of it even existing in our business.

Mr. CHINDBLOM. In the ship chandlery business?

Mr. DONALDSON. Where the runner meets the ship and has his office in his hat, with no stock of any kind from which he could possibly furnish anything. The Shipping Board refuses to recognize those fellows for that kind of competition because it means a premium; they would have to pay a premium on the price, because he has to go around and buy from every Tom, Dick, and Harry.

Mr. EDMONDS. And yet, if you pass this law, there is nothing to prevent buying a dozen cases of canned goods and taking out one or two cases, delivering 10 to the ship and selling the other 2 somewhere else and the chandler would not know anything about it.

Mr. DONALDSON. Not without a positive checking system against the ship, against the requisition both as to the quantity and quality of the goods provided.

Mr. EDMONDS. Where the captain is in cahoots with the runner there would be no way of checking it on the ship. The captain would say he got a dozen cases, although he did not get but 10, and what are you going to do about it?

Mr. DONALDSON. The owner would either have to send a representative, as a number of them do, to check this aboard, or authorize some agent to look after that for him and handle it from his office.

Mr. EDMONDS. I am in full sympathy with the purpose of the bill, Mr. Donaldson—I want you to understand that—but yet, at the same time, I can see the difficulties of carrying it out. I believe with the

threat and the possibility every once in a while of a conviction would do a great deal of good.

Mr. DONALDSON. A wonderful amount of good.

Mr. BANKHEAD. Do you think there could be any legitimate objection on the part of any honest ship chandler to the passage of this bill or other ship suppliers?

Mr. DONALDSON. I do not believe so.

Mr. BANKHEAD. There would be objection, however, of those who engage in the practice and continue to engage in it?

Mr. DONALDSON. Yes, sir; but the high class ship chandlery houses in the country want to eliminate this thing, and as it obtains in the other branches of the business, the big businesses along the coast, I am satisfied they are in sympathy with eliminating the practice. They do not want to do business along this line.

Mr. BANKHEAD. In other words, the purpose of this bill is to protect, in the first instance, the owner against fraud on the part of his agent?

Mr. DONALDSON. Yes, sir.

Mr. BANKHEAD. And, in the second place, to protect the honest ship supplier from dishonest competition in the way of graft on the part of his competitor?

Mr. DONALDSON. Yes, sir.

Mr. HARDY. It would have the effect, also, of giving the ship chandler, the man furnishing these things, a good reason for refusing and saying to those fellows, "If I should give you this commission I would be violating the law, and I can not do it," some of whom would like to have that reason.

Mr. DONALDSON. Some have more courage to do it, but others realize if they do not do it they are going to lose their business to their competitors, and they do it in self-defense.

Mr. HARDY. But if it was a violation of a penal law, they would not hesitate to tell the fellow they could not do it?

Mr. DONALDSON. That is it. There is no absolute law against that thing. That is our whole trouble, and we can not do anything with these fellows. We have lost business always.

Mr. LAZARO. In other words, without a law of this kind the fellows who are practicing this business feel they are not doing anything wrong?

Mr. DONALDSON. Absolutely. They figure it is part of their compensation. It is a custom that has been going on for years and they can not understand why we do not give them this commission. They do not realize why it is not kept up.

Mr. WHITE. I would like to ask the witness and Mr. Miller, who introduced the bill, and the chairman whether or not there is anyone appearing in opposition to the bill or whether there is anyone here opposing the bill, so far as anyone knows?

The CHAIRMAN. I have heard of no opposition.

Mr. MILLER. So far as I am concerned, I know of no one who is opposing this bill. No one has come to see me or written me opposing the measure.

Mr. EDMONDS. If this is done principally on foreign ships, would it not be one of the things that would help building up the American merchant marine to let the foreign ships go on and do it, because it will make the foreign ships more expensive to run?

Mr. DONALDSON. The owner pays the fiddler. I think it would.

Mr. ROWE. He just simply adds it to the freight he carries, and we really pay the bill.

Mr. DONALDSON. If we ever get in a position where we sell our stuff c. i. f., with our merchant marine I should think this premium that these fellows have to pay would have some effect in competition with us.

Mr. HARDY. It might have this effect, also, after you pass this law: They would see that it could not be arranged for in this country and these grafting purchasers would buy somewhere else, as far as they could.

Mr. DONALDSON. That is true; they would buy in their own country.

Mr. CHINDBLOM. As I understand, there is considerable difficulty about that. A ship can not stop very well at a port without unloading or taking on cargo, and if it made an extra stop at some port the master would have the owner to reckon with.

Mr. HARDY. I understand they could not buy all their supplies elsewhere, but they could place the larger part of their orders in other countries where they unload most of their cargo.

Mr. CHINDBLOM. At all events, even though there are great difficulties of enforcing the law, it might do some good in deterring the continuation of the practice.

Mr. DONALDSON. The moral effect of the law would make the ship chandler stand pat and say, "Here, we are breaking the law if we give you this commission; we are not going to give you 5 cents." He would go to the other ship chandler and get the same answer, and he goes to the other supplier and gets the same answer and goes to all the different industries along the coast and they all say "No; we have a law against this thing now and we can not pay any commissions, and it is a criminal offense if you do pay any commission." That stops the fellow from getting the commission, even if you can not stop the master from asking for it.

Mr. HARDY. It gives the merchant a good opportunity to say "I can not do it."

Mr. DONALDSON. Absolutely.

Mr. MILLER. May I just interrupt Mr. Donaldson a moment. Mr. Duff, who is here, representing the American Shipowners' Association, has another engagement and he would like to say a few words.

STATEMENT OF MR. EDWIN H. DUFF, WASHINGTON, D. C., REPRESENTING THE AMERICAN STEAMSHIP OWNERS' ASSOCIATION AND THE PACIFIC-AMERICAN STEAMSHIP ASSOCIATION.

Mr. DUFF. I have not anything to say other than that I have brought this measure to the attention of most all of the members of both of the associations and have heard no unfavorable comments from any of them. Quite to the contrary, those from whom I have received advices have been in favor of the measure. Some one or two have suggested an amendment after the word "master" by the inclusion of the words "or other officers." Beyond that, and it is not important, I have no criticism of the measure.

Mr. CHINDBLOM. Let me ask the gentleman a question: The penalty here is a fine of not less than $1,000 and not more than $5,000,

or imprisonment for not less than 6 months and not more than 12 moths, or both. It occurs to me that a fine of not less than $1,000 might be a little severe where some of these transactions probably relate to very small amounts. Have you any observation or any opinion on that?

Mr. DUFF. I think that rests entirely with the committee. They can make the penalty large or small, just as might meet its pleasure. There is quite a good deal of this back-door profit going on, particularly with respect to masters of foreign vessels. To get the real facts, I think you ought to call on the master of a vessel who is willing to talk and who has had some experience or is familiar with just what goes on—how they handle that kind of business.

Mr. HARDY. Do you not think this bill includes your idea by saying, "The master of any vessel or other person having authority to contract for repairs, supplies, etc.?"

Mr. DUFF. The only thing I had in mind, Mr. Hardy, was that there might be a possibility of the words "or other person" in some manner unintentionally affecting the business of a naval architect who, in some way, might be working on a commission.

Mr. HARDY. What was your suggestion there?

Mr. DUFF. The master or other officer, any officer connected with the vessel.

Mr. HARDY. Probably a man who has done the buying is not an officer; he is just an agent for that purpose.

Mr. CHINDBLOM. Your idea is not to strike out the phrase "or other persons having authority to contract"?

Mr. DUFF. There is no special objection to that. The thought Mr. Hardy injects had not entered my mind, and I have no particular objection to the bill remaining as it is. I thought it might be a good idea to include "or other officer."

Mr. LAZARO. In other words, it would eliminate the crews?

Mr. DUFF. It would eliminate the crew.

Mr. EDMONDS. Would you suggest cutting out "or other persons" and putting in "or other officers"?

Mr. DUFF. That was my suggestion. But I had no idea of making it possible for anyone else to manipulate the thing in such a manner as to continue this practice.

Mr. HARDY. It is suggested to me that sometimes managing owners, not officers at all, get into the game and get a little rake-off.

Mr. DUFF. They could hardly——

Mr. HARDY. And I think it better to make it read anybody who gets a commission.

Mr. DUFF. All right, make it both.

Mr. HARDY. I think it covers it just like it is—the master or any other person.

Mr. EDMONDS. Mr. Duff, you know one of the very fruitful sources of graft is contracts for repairs, and that is done by different parties who are connected with the making of surveys, and so on all the way down the line. You certainly would not want those excepted if they were receiving graft?

Mr. DUFF. No; I have absolutely no thought of making it possible for anyone to continue the practice.

STATEMENT OF MR. M. Q. MACDONALD, ATTORNEY AT LAW, WASHINGTON, D. C.

Mr. MACDONALD. I am appearing on behalf of the National Varnish Manufacturers' Association and the Paint Manufacturers' Association of the United States. The National Varnish Manufacturers' Association and the Paint Manufacturers' Association of the United States, as well as practically all paint and varnish manufacturers not represented in those associations, very strongly advocate the enactment of a criminal law prohibiting the giving, offering, accepting, and solicitation of bribes, not only in the marine business but in all industries. They fully agree with the late Mr. Justice Lurton who, in referring to corrupt arrangements between manufacturers and the customer's employee, said that the conflict that is created between duty and interest is an utterly vicious thing, plainly pernicious and an unmixed evil. We certainly subscribe to all that.

I will offer some criticism of the Miller bill, but it will be friendly criticism and, I hope, constructive criticism. In matters of this kind, the vendors (such as paint and varnish manufacturers) and the customers (such as shipowners, shipyard builders, and all those who buy paint and varnish) meet on common ground, as the vendors and the vendees are equally interested in the elimination of a practice which no doubt stifles and suppresses free and fair competition, a practice which, in the language of Lord Russell, the author of the English antibribery law, is dishonest to the fair trader and dishonest to the fair employer.

With reference to the prevalence of bribery I might say it is due to two principal causes. First, perhaps, is the keenness of competition, and, very frequently, almost as frequently, I would say, to expressed or implied demands of the employees themselves, the master and engineer, and the steward. It is not necessary for them to expressly ask for a commission. It has been the custom in the trade, and if you do not conform to the custom you get no more of the business; they simply depart and do business elsewhere. It is true that sometimes they have the boldness to ask for graft; but it is seldom, indeed, that it is necessary.

Another important contributing cause is the ease with which employees spoil goods. There is not the slightest doubt that any quantity of goods, not only in the marine business but in all other businesses, have been spoiled deliberately by the man who is either disappointed because he did not get his graft or is attempting to extort it. I will not say that in all cases where goods have been spoiled they were spoiled with the privity and connivance or procurement of the manufacturer who supplied the goods, or the dealer or his salesman; but I will say emphatically that it is the natural and probable consequence of the act of paying graft. You pay a man for wanting to fight for you and he is going to see that nobody else gets the business. That is what you pay him for.

The treatment given to various classes of goods by the employees who receive bribes or by those employees who are determined to exact a secret commission varies, of course, with the nature of the business and the nature of the product.

Speaking of varnish, I might say that almost any foreign substance will destroy varnish. It is one of the products that is as nearly complete as it can be made when it leaves the hands of the manufacturer. A little lubricating oil, a little acid, a little emery, almost anything at all, will destroy varnish. You put acid in and it will all check up; you put emery in and when you rub it it will scratch; put lubricating oil in it and it won't dry. Do anything at all to varnish, reduce it too much, and it spoils. But it is not necessary to go that far; all they have to do is to fail to give it the treatment that it demands and that the proper skillful workman should give it in performing his full duty to his employer.

Unfortunately a great many of them seem to think that the manufacturer when he has supplied a perfect product in compliance with the specifications of the purchaser still owes another duty, that of paying a commission to the man who is going to use it. That is, unfortunately, true. The mere failure to properly adjust a spraying machine while testing one varnish and properly adjusting it when testing a varnish of the favored manufacturer will make such a difference in results that the purchasing agent has no hesitation in not recommending one and recommending the other.

Drying is affected by weather conditions and the exposure of one piece of work to dampness or cold while protecting the other will give exactly similar results when time is an element in drying, and it usually is.

The same is true of paint. Paint can be spoiled by the addition of almost any foreign matter and unfavorable results therefore brought about by mere neglect of the ordinary duties owed by the skillful workman to the employer; and if he gives it anything less than that, in consideration of any money received from the salesman of the manufacturer, he has betrayed his trust.

The same condition is true in other industries. In speaking of other industries, I am departing, of course, from the marine bribery.

Mr. BANKHEAD. What is the use of going into that, because we are only considering the things covered by this bill, and I doubt if this committee would have jurisdiction or legal authority to consider any other industry.

Mr. MACDONALD. It will do this: I believe very few people have any conception of the prevalence of bribery in industry generally.

Mr. BANKHEAD. But this committee has not any authority to handle that subject.

Mr. MACDONALD. You believe that the committee would have no authority, we will say, to recommend?

Mr. BANKHEAD. No; not with reference to general industrial activities, I do not think we would.

Mr. CHINDBLOM. We are limited by the constitutional provisions to Federal legislation, of course.

Mr. MACDONALD. Of course, but other industries would come fully within the commerce clause?

Mr. ROWE. We only have a few more minutes left and I would like to have you make a statement just with reference to this bill. We are all in sympathy with the measure, I presume every man in the room, and just make a statement with reference to this bill as briefly as you can.

Mr. MACDONALD. Confining it merely to the marine business and the bill, I have a few criticisms of the Miller bill. The Miller bill is limited to those employees who have the authority to contract. The difficulty is not always with those who have authority to contract. Of course, the master has; the steward probably has not; the engineer has not. And in the shipyards, the difficulty is not with the purchasing agent as a rule. Taking the purchasing agents as a class, you certainly can give them a clean bill of health; but the difficulty is with the man down in the shop, down in the yard—the foreman who insists upon getting "his" before any material can be used in his department. That man has no authority to contract but he has the power to recommend and to conduct tests and to approve. And the bill certainly should be extended to include all those whose influence counts in placing the business.

Mr. CHINDBLOM. Have you any language to suggest for that purpose?

Mr. MACDONALD. Yes, sir; Senator Cummins introduced a bill in the Senate, S. 1024, some time ago, that I think is probably a model of this kind. The language strongly suggests that adopted in the English antibribery law, with such changes as would be necessary to meet conditions in this country—that is to say, interstate commerce—a situation with which they are not confronted. And with that in view, I would suggest a draft which I will leave with the committee.

Senator Fletcher also introduced a bill with the same object in view, applying to industry in general, the first two sections of which I do not like as well as I do the Cummins bill. The last two sections, though, I think are particularly valuable.

Mr. CHINDBLOM. What is the number of that bill?

Mr. MACDONALD. The Fletcher bill is S. 4603, Sixty-fifth Congress, second session.

Mr. CHINDBLOM. Is that other Cummins bill of the Sixty-fifth Congress, too?

Mr. MACDONALD. The Sixty-sixth Congress, first session. I will leave copies of those bills with the committee.

Section 3 of the Fletcher bill is of peculiar interest in connection with the marine bribery situation. It provides that any person who gives to any attorney, agent, or employee of another, or any attorney, agent, or employee who uses with intent to deceive his principal or employer, any receipt, account, or other document in respect of which the principal or employer is interested, which contains any statement which is false, erroneous, or defective in any material particular, and which is calculated to mislead his principal or employer, whenever such instrument relates to a transaction in interstate or foreign commerce, shall be guilty of a misdemeanor, and shall be punished, and so forth.

That clause particularly covers an evil that exists in the marine trade. It covers giving a false invoice to the master. The master, we will say, buys $500 worth of anything and he pays $500 in cash and gets a $600 invoice. That is the invoice upon which he is reimbursed or that he squares his account with when he makes his return to his foreign owner or American owner, as the case may be. That is a false document obtained by him for the purpose of deceiving his

employer. It is given by the ship store dealer or paint manufacturer or what not for that particular purpose. In the Fletcher bill that is made a separate and distinct offense, because it tends to correct that particular method of grafting. I might say that that section is contained in any English legislation, but not in our law—all the anti-bribery legislation of the English colonies—and it has been found effective.

Section 4 of the Fletcher bill is also of interest because it takes up a difficulty just discussed by the committee, the difficulty of proving a case when you frame a bill that makes both parties guilty. It provides that any person guilty of an offense within the purview of the act who shall report the facts under oath, within six months after committing such offense, to any United States district attorney may be granted full immunity from prosecution under this act in respect to the particular offense reported, provided such information shall not then be in the knowledge of such official. It covers one of the greatest difficulties that the paint and varnish manufacturers have had to deal with in the elimination of bribery. We claim no immunity for ourselves. If there is any paint or varnish manufacturer or paint or varnish salesman who is guilty of that offense and we can possibly find out the facts, the paint and varnish manufacturers are willing to spend money to see him go to jail.

Mr. WRIGHT. Could not that be met by providing that each could be a witness against the other—the buyer who accepts this bribe and the fellow who offers it?

Mr. MACDONALD. In that case, you would have to grant immunity.

Mr. WRIGHT. In that case, you could simply provide they could be competent witnesses one against the other. You see, you can not make a man give evidence under the Constitution against himself unless you grant immunity——

Mr. MACDONALD. Unless you grant full immunity.

Mr. WRIGHT. But that does not make the man give evidence against himself; it simply says when testifying against the other it will be admissible against him.

Mr. MACDONALD. You mean you can compel him to testify?

Mr. WRIGHT. You can compel him to testify against somebody else, but the testimony he then gives could never be used against him.

Mr. HARDY. You would soon run into a corner, though, where a man would refuse to testify on the ground his evidence would tend to incriminate him.

Mr. WRIGHT. But you could make it competent and compel him to testify against somebody else?

Mr. MACDONALD. However, the value of evidence of this kind is not so much in securing convictions, but this is one thing that is absolutely necessary. To-day, in practically every bribery statute, both parties are equally guilty; they are united not only by financial ties but by such a law they are joined together in a conspiracy of silence. Each one of them knows that the other can not possibly disclose the fact of bribery. If I paid money to-day in any State where it was a crime, I would know that the other party could not tell on me and I could not tell on him. We are both perfectly safe to continue the practice. Now we put in an immunity provision which simply leaves them in this condition: Any time that the other party to the transaction cares

to break away he can. He can leave the other fellow high and dry, as far as the consequences are concerned. The result is as soon as the money has passed over into the hands of the other party he is liable to prosecution, and it will act as a deterrent. It will prevent the commission of the crime in the first place, because instead of being perfectly safe they know that if they do it they will be in the hands of the other side, and we know, of course, that friction sooner or later arises in graft cases. It would have as great an effect as the penalty itself and a greater effect probably, and that is the chief difficulty to-day, that they can pay it with impunity so far as the legal consequences are concerned.

Mr. ROWE. You might go even further than that. Even the agents of a company giving bribes, like the weighers, packers, and shippers, are all liable under most of the laws of the States and would be under this law.

Mr. MACDONALD. Yes; they should be under this law.

Mr. ROWE. Even though they got no benefit from it, if it went purely to their employers. Take, for instance, a man weighing coal or packing eggs and the firm he works for asks him to make a fraudulent weight of the coal. He is liable?

Mr. MACDONALD. We very seldom had difficulty in that kind of a case; that is, it would be new to my experience.

Mr. ROWE. We have had big difficulties in some of the States in reference to it, in selling coal.

Mr. MACDONALD. The man who does false weighing does not get part of the rake-off?

Mr. ROWE. He is just the weigher.

Mr. MACDONALD. I would not do it on a bet unless I got something out of it.

Mr. ROWE. Probably he gets better wages or he would lose his job if he did not do it in some cases.

Mr. MACDONALD. Yes; I believe that did come up in some of the customs frauds a few years ago, too, did it not?

Mr. ROWE. Yes. You see, nearly all those were big concerns and it was done by employees and was not done by the owners of the concerns. These bonded manufacturers won't handle it; they know about it probably, but it is pretty hard to get up to them.

Mr. MACDONALD. The salesman is the one who arranges such transactions in the paint or varnish.

Mr. CHINDBLOM. Have you a draft of a bill such as you suggest?

Mr. MACDONALD. Of a bill containing section 1 of the Cummins bill with sections 2 and 3 of the Fletcher bill, and including something they do not have, commerce within the District of Columbia.

Mr. BANKHEAD. Does the bill you prepared apply only to marine matters?

Mr. MACDONALD. No, sir.

Mr. EDMONDS. It applies to goods in interstate commerce. I think we could cover that under the Constitution, of course.

Mr. MACDONALD. Such a bill would cover it.

Mr. EDMONDS. It would cover marine along with it.

Mr. BANKHEAD. I do not think this committee has any jurisdiction to frame up an interstate commerce law.

Mr. ROWE. This bill was properly referred to this committee as drawn; but if the bill were drawn, as you suggest you have drawn it, it would not have been referred to this committee.

Mr. WHITE. It seems to me if we confine this to marine matters, we can agree on the bill and report it out with a fair chance of getting it passed in the immediate future. If we undertake to cover the whole field, you will find insistent demands for hearings which will run a considerable time and you will find a conflict between committees as to jurisdiction, and you will postpone for a long time the remedying of the particular conditions and evils at which this bill was aimed. My judgment about it is in our consideration and our action we had better limit ourselves to the marine end of it.

Mr. EDMONDS. I would like to suggest, Mr. White, it would be just as well for the witness to give us his bill and to put it in the hearings, because we may have to redraft this bill and make it a little stronger.

Mr. WHITE. I think so, but if we undertake to branch out into all industries we will have hearings that will last indefinitely, and we will have a row over it with the Interstate Commerce Committee, and the Judiciary Committee, as to jurisdiction.

Mr. BANKHEAD. I will state for one, I would be inclined to raise the question of jurisdiction myself.

Mr. WHITE. And it would postpone indefinitely action on this particular grievance.

The CHAIRMAN. I think that is correct.

Mr. EDMONDS. I suggest the gentleman give us his copy of the bill.

Mr. MACDONALD. I would be very glad to.

Mr. EDMONDS. I think it might be very helpful in redrafting this particular bill.

Mr. MACDONALD. I might say, in addition, if the committee cares to use the material, I have in my office a copy of every anticommercial bribery law, I believe, that has been passed in the world—and if such drafts are of any assistance to the committee, they are more than welcome to use them.

Mr. EDMONDS. We will call on them if we need them.

Mr. MACDONALD. I do recommend the consideration of sections 2 and 3 of the Fletcher bill in connection with any marine bill which the committee might draw, because they would be peculiarly applicable to that business.

Mr. ROWE. Mr. Chairman, I would like to include here a letter from the Department of Justice, signed by R. P. Stewart, Assistant Attorney General, to whom I sent a copy of this bill. His letter states that there is no law at the present time dealing with the subject matter covered by the Miller bill. I will just introduce the letter into the record at this time.

(The letter referred to is as follows:)

DEPARTMENT OF JUSTICE,
Washington, D. C., January 3, 1920.

HON. FREDERICK W. ROWE,
House of Representatives, Washington, D. C.

DEAR SIR: I have the honor to acknowledge your letter of December 20, inclosing a copy of H. R. 9572 and inquiring whether there is not already sufficient law for the punishment of the crimes mentioned therein.

An examination of the act discloses that it makes it unlawful for any master or other person having authority to contract for repairs, etc., for any vessel to receive, etc., any commission for the purpose of inducing the making of a contract for repairs, etc., and punishes the offense as a misdemeanor.

In reply you are advised that this department knows of no Federal law at present dealing with the subject matter covered by this act.

Respectfully,
For the Attorney General.

R. P. STEWART,
Assistant Attorney General.

Mr. BANKHEAD. Mr. Chairman, you do not want this proposed bill incorporated in the hearing and printed, that the witness is leaving?

Mr. EDMONDS. Yes; I believe it should go in the hearings, because we will only use that as a model for changing the Miller bill.

Mr. MILLER. Mr. Donaldson had one statement to make which he omitted in giving his testimony.

Mr. DONALDSON. I would just like to say, Mr. Chairman, the National Foreign Trade Council are in favor of this bill and have written a letter to that effect.

Mr. BANKHEAD. Where are they?

Mr. DONALDSON. They are mostly engaged in foreign trade, I believe, and represent almost every industry. Mr. Farrell, of the Steel Corporation, is president of it. It is a large institution. They have their next meeting on the coast next May. They meet every year, and at these meetings these matters are brought up. This bill was before the executive committee of the council and they indorsed it.

Mr. MACDONALD. One statement I would like to go in the record which I believe I did not make, and that is the evil so far as the paint and varnish end of the marine trade is concerned, up to a few years ago, when the two industries took steps to correct it and eventually eliminate it, was no imaginary evil: it was right there, and so far as the shipyards were concerned, the conditions were intolerable. They are better to-day, very, very much better; but it is a constant struggle.

Mr. ROWE. Have you ever taken this matter up with the Federal Trade Commission?

Mr. MACDONALD. Yes, sir; they have rendered greater services to the paint and varnish industries, so far, than all the State and Federal authorities together have been able to do; but their jurisdiction is limited in this way, that they must necessarily approach it from the standpoint of an unfair method of competition. So far as competitors are concerned, they have jurisdiction. The paint and varnish concerns were pretty badly mauled, but we were glad of it. It was a perfect godsend. But they have no jurisdiction to reach the grafter, the man who stands at the door and whom you must pay before you can sell. Until it becomes a method of competition (and the employee is not a competitor), they have no jurisdiction. And it leaves us to-day where, before anything can be done, you must actually commit the fault. Now, the criminal law goes a step further—the step we need—and makes solicitation of the bribe a crime. And that is very necessary, because to-day the painters and finishers are defiant; they say "You can not touch me."

Mr. HARDY. Did you include a clause in there to cover the idea that users or purchasers may demand graft in order to protect them from throwing off on the goods purchased?

Mr. MACDONALD. The Cummins bill refers, as does the Miller bill, for that matter, to those who give, offer, demand, or accept. It covers all parties.

Mr. HARDY. But that is from the party buying or to the party paying. The Miller bill has reference, as I understand, wholly to the relations and dealings between purchaser and seller.

Mr. MACDONALD. Between purchaser and seller.

Mr. HARDY. You want to go further?

Mr. MACDONALD. The Cummins bill prohibits the payment of gratuities for the purpose of influencing business, and it makes no difference to whom they are paid.

Mr. HARDY. In other words, you want to get the fellow who made the paint spoil by the introduction of some foreign substance?

Mr. MACDONALD. That is it exactly; any fellow paid for influencing his conduct with relation to his employer's business.

Mr. HARDY. Is it true that not only do the buyers of those supplies demand their commissions but certain users of them on board the ships demand to be paid, also?

Mr. MACDONALD. So far as the ships are concerned, I am not positive, for example, who would get the graft on paint? I believe it is the engineer instead of the master. The master gets anything that goes on the deck and the engineer gets anything that goes inside. However, I am not so sure of that as I am of the condition that existed just a while back in the shipyards. In the shipyards it is not the purchasing agent who is at fault; it is the foreman, the paint superintendent, the head of the paint shop. He has no authority to buy, but the goods are sent to him to test and to use and they are no good.

Mr. HARDY. You mean the seller must go to this foreman of the paint shop, who has the option to try out his goods, and he will make them a failure or a success as he desires?

Mr. MACDONALD. Yes.

Mr. HARDY. And in some way he gets into the game and demands pay; he does not object to pay?

Mr. MACDONALD. He does not, no; but he does not do the purchasing. He does not fill out the order, but he is the man with whom you must make your peace.

Mr. CHINDBLOM. He does the testing?

Mr. MACDONALD. He does the testing.

Mr. MILLER. He can give a good test or a bad test.

Mr. HARDY. This bill does not apply to him.

Mr. MACDONALD. As drawn now, the Miller bill does not. The Cummins bill would cover that adequately, and that is the copy of the bill I have submitted with my combination draft that would cover all parties who are paid in order to influence contracts in relation to their employer's business.

Mr. WRIGHT. I understood you to say there was a draft there that prohibits offering something to the foreman who does the testing also?

Mr. MACDONALD. That is another line of business. The foreman is in the shipyards and the master is on the vessel.

Mr. CHINDBLOM. It is the same thing you have in a restaurant. If you want a good steak, you have to tip the waiter first and then send a tip out to the cook to get a good steak.

(The drafts of bills submitted by Mr. Macdonald are as follows:)

EXHIBIT A.

UNITED STATES FOOD ADMINISTRATION.
Washington, D. C., November 4, 1918.

To all dealers in foodstuffs:

The practice of the payment of commissions by retail and other merchants to the stewards, butlers, chefs, cooks, servants, and other agents and employees of their patrons is widespread in the District of Columbia. In many cases the practice is known and assented to by the patrons. In any case, it is a demoralizing and corrupting practice. Moreover, as the payment of these commissions increases the cost of the retailer's business, the necessary direct result to the public at large is a general increase in prices. In other words, the public pays for these tips and commissions to servants. To put an end to this practice, the following rule is hereby promulgated and announced:

On and after November 5, 1918, the payment of commissions, fees, tips, or other gifts or gratuities by dealers in foodstuffs to the stewards, butlers, chefs cooks, and other servants and employees of the patrons and customers of such dealers will be considered an unfair practice.

This rule will be strictly enforced, and upon its violation a recommendation will be made to the United States Food Administration that an unfair order be issued against the retail dealer offending against the rule, which order will prohibit all wholesale dealers, licensees of the Food Administration, from selling the licensed foodstuffs to such retail dealer.

CLARENCE R. WILSON,
Federal Food Administrator for the District of Columbia.

EXHIBIT B.

H. R. 9572. A BILL To prohibit the payment of gratuities to the masters of vessels, or other persons, for the purpose of inducing or securing contracts for repairing vessels or furnishing vessels with supplies or other necessaries.

Be it enacted, etc., That from and after the passage of this act it shall be unlawful for the master of any vessel, or other persons, having authority to contract for repairs, supplies, or necessaries for any vessel, to receive or solicit, directly or indirectly, any commission, bonus, gratuity, sum of money, or other thing of value, for the purpose of inducing the making or placing of any contract, express or implied, for repairs, supplies, or necessaries for any vessel, or the use of any dry dock or marine railway facilities for any vessel; and whoever shall receive, solicit, offer, give, or pay, directly or indirectly, any such commission, bonus, gratuity, sum of money, or other thing of value, for the purposes aforesaid, shall be deemed guilty of a misdemeanor and shall upon conviction be punished by a fine of not less than $1,000 and of not more than $5,000, or by imprisonment for not less than 6 months and not more than 12 months, or both.

S. 1024. A BILL To make it unlawful and to punish giving commissions, bribes, or rewards to employees, and to accept the same, and for other purposes.

Be it enacted, etc., That it shall be unlawful for any person, corporation, partnership, or other organization to offer or give to an employee or agent or to a member of his family or to anyone for his use or benefit, directly or indirectly, any commission, money, property, or other valuable thing as an inducement, a bribe, or reward for doing or omitting to do any act or for showing or forbearing to show any favor or disfavor by such employee in relation to the affairs or business of his employer or principal, which affairs or business constitute or affect commerce among the States or with foreign nations, or for any employee or agent to solicit, accept, receive, or take, directly or indirectly, any commission, money, property, or other valuable thing as an inducement, a bribe, or reward for doing or omitting to do any act or for showing any favor or disfavor in relation to the affairs or business of his employer or principal, which affairs or business constitute or affect commerce among the States or with foreign nations: *Provided, however*, That the foregoing shall not apply to transactions between an employer or principal and his employee or agent.

SEC. 2. That whoever violates the provisions of this act shall upon conviction be punished by a fine of not more than $5,000, or imprisonment for not more than five years, or both. If a corporation, partnership, or other organization is guilty of a violation hereof, the person or persons through whom the corporation, partnership, or other organization acts shall also be deemed guilty and punished as aforesaid.

S. 4603. A BILL To further protect interstate and foreign commerce against bribery and other corrupt trade practices.

Be it enacted, etc., That any person, while engaged in interstate or foreign commerce, or in competition with other persons thus engaged, who shall personally, or through an attorney, agent, servant, or employee, or by the use of the mails or otherwise, give, offer, promise, or loan to any attorney, agent, servant, or employee of a customer or prospective customer, or to any attorney, agent, servant, or employee, officer, director, or member of any corporation, association, firm, or partnership, customer or prospective customer, any money or other thing of value for himself, or for the use or benefit of another, to influence the action of such recipient in relation to the business of his employer or principal, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than $100 nor more than $1,000, or by imprisonment for not more than two years, or by both such fine and imprisonment.

SEC. 2. That any person employed as an attorney, agent, servant, or employee of another, or any member of a firm or partnership, or any officer, director, member, or attorney of any association or corporation using or having charge of or directing the purchase, obtainment, or use for his principal or employer, or for his firm, partnership, association, or corporation, of any goods, wares, or merchandise in interstate or foreign commerce, or that are to be used on or in any goods, wares, or merchandise intended to be used in interstate or foreign commerce, who shall corruptly accept, solicit, or agree to accept, any money or other thing of value or loan for himself or for the use and benefit of another, from any person in connection with such purchase, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than $1,000, nor more than $5,000, or by imprisonment for not less than two years, or by both such fine and imprisonment.

SEC. 3. That any person who gives to any attorney, agent, or employee of another, or any attorney, agent, or employee who uses with intent to deceive his principal or employer, any receipt, account, or other document, in respect of which the principal or employer is interested, which contains any statement which is false, erroneous, or defective in any material particular, and which is calculated to mislead his principal or employer, whenever such instrument relates to a transaction in interstate or foreign commerce, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than $500 nor more than $1,000, or by imprisonment for not less than one year, or by both such fine and imprisonment.

SEC. 4. That any person guilty of an offense within the purview of this act who shall report the facts, under oath, within six months after committing such offense, to any United States district attorney, may be granted full immunity from prosecution under this act in respect of the particular offense reported: *Provided*, Such information shall not then be in the knowledge of such official.

EXHIBIT C.

A BILL To make it unlawful and to punish giving commissions, bribes, or rewards to employees, and to accept the same, and for other purposes.

Be it enacted, etc., That it shall be unlawful for any person, corporation, partnership, or other organization to offer or give to an employee or agent or to a member of his family or to anyone for his use or benefit, directly or indirectly, any commission, money, property, or other valuable thing as an inducement, a bribe, or reward for doing or omitting to do any act or for showing or forebearing to show any favor or disfavor by such employee in relation to the affairs or business of his employer or principal, which affairs or business constitute or affect commerce among the States or in the District of Columbia or with foreign nations, or for any employee or agent to solicit, accept, receive, or take, directly or indirectly, any commission, money, property, or other valuable thing as an inducement, a bribe, or reward for doing or omitting to

do any act or for showing any favor or disfavor in relation to the affairs or business of his employer or principal, which affairs or business constitute or affect commerce among the States or in the District of Columbia or with foreign nations; *Provided, however*, That the foregoing shall not apply to transactions between an employer or principal and his employee or agent.

That any person who gives to any attorney, agent, or employee of another, or any attorney, agent, or employee who uses with intent to deceive his principal or employer, any receipt, account, or other document in respect of which the principal or employer is interested which contains any statement which is false, erroneous, or defective in any material particular and which is calculated to mislead his principal or employer, whenever such instrument relates to a transaction in interstate or foreign commerce, shall be guilty of a misdemeanor and shall be punished by a fine of not more than $——— or by imprisonment of not more than ——— years, or by both such fine and imprisonment.

That any person guilty of an offense within the purview of this act who shall report the facts under oath within six months after committing such offense to any United States district attorney may be granted full immunity from prosecution under this act in respect of the particular offense reported, provided such information shall not then be in the knowledge of such official.

That whoever violates the provisions of section 1 of this act shall upon conviction be punished by a fine of not more than $——— or imprisonment for not more than ——— years, or both. If a corporation, partnership, or other organization is guilty of a violation thereof, the person or persons through whom the corporation, partnership, or other organization acts shall also be deemed guilty and punished as aforesaid.

MEMORANDUM IN RE PROPOSED BILL TO PREVENT COMMERCIAL BRIBERY.

SECTION 1. This section is a copy of section 1 of S. 4625, Sixty-fifth Congress, second session, introduced by Senator Cummins and referred to the Committee on the Judiciary. It appears to be somewhat broader than section 1 of H. R. 12143, Sixty-fifth Congress, second session (Mr. Sims), and S. 4603, Sixty-fifth Congress, second session (Senator Fletcher). It expressly prohibits gifts to a member of the family of the person intended to be bribed or to anyone for his use or benefit. This indirect method of paying bribes has been resorted to in the past, and it is highly desirable to specifically prohibit it. Many persons who might not pay any attention to such words as "directly or indirectly" would take notice of a specific prohibition. A similar specific prohibition is found in the laws of Victora (No. 1974, 1905), Western Australa (No. 13, 1905). Tasmania (No. 21, 1906), South Australia (No. 1006, 1910), and New Zealand (No. 40, 1910).

District of Columbia: Commerce within the District of Columbia is not protected by any of the measures introduced during the last session of Congress. This is obviously an oversight. (See notice of Federal food administrator for the District of Columbia, dated Nov. 4, 1918, calling attention to the payment of commissions, etc., to stewards, butlers, chefs, cooks, and other servants and declaring the same to be an unfair practice. (An interlineation has been made in order to call attention to this omission.)

SEC. 2. This section covers the practice of double invoicing. It is a copy of section 3 of the Sims and Fletcher bills. The practice is resorted to when a corrupt agent is required by his employer to present bills. It is merely another form of "graft" which has been prevalent in other countries and, no doubt, exists here.

In 1877 Jessel, M. R., was trying a case involving double invoicing. When counsel offered to prove by "a large number of respectable people" that the practice was universal, Sir George Jessel replied, "You can send those respectable people home; they have come to prove an iniquitous practice, and the sooner they leave the court the better." (Crew on Secret Commissions and Bribes, 58.) Other purposes for which misleading documents are used are disclosed by the attached leaflet published by the Bribery and Secret Commissions Prevention League, London. Such a provision is found in the antibribery laws of England (1 Edw. VII., c. 34), Australia (Commonwealth, No. 1, 1905), western Australia (No. 13, 1905), Tasmania (No. 21, 1906), Isle of Man (Laws, 1908), South Australia (No. 1006, 1910), New Zealand (No. 40, 1910), and possibly other British colonies. The attached leaflet shows that the English statute has been of value. Although 15 of the States of the United States

have antibribery laws, none of them have prohibited the giving and the use of false and misleading statements of account.

SEC. 3. Immunity: This is a copy of section 4 of the Sims and Fletcher bills. It is of the utmost importance, as it will tend to make the act self-executing. While antibribery laws have been on the statute books of 15 States for many years, they have been rarely enforced. Only one criminal prosecution has been brought to my attention. This is not due to the indifference of the prosecuting officers, but is due solely to the fact that the only parties knowing of the offense are not only equally interested in keeping the matter secret because it is profitable, but because they are equally guilty under the law. Such a law effectually stands in the way of its own execution. The offense of bribery is in a class by itself and requires a different method of procedure. Crimes of violence involve two opposing parties and the injured party may be relied on to disclose the injury to the prosecuting officers.

Salesmen and employees can bribe and take bribes with impunity to-day and rest assured that the only party knowing of their guilt is equally guilty and can never use this knowledge. With the standing offer of immunity, few salesmen would care to place their liberty in the hands of another, who might later decide to claim immunity for himself. This provision would do quite as much to prevent the offense in the first instance as the penalty itself. It is regarded as vital to the successful enforcement of the act.

Respectfully submitted.

M. Q. MACDONALD,
For National Varnish Manufacturers' Association and Paint Manufacturers' Association of the United States.

JANUARY 15, 1920.

MISLEADING RECEIPTS AND FALSE STATEMENTS OF ACCOUNT.

It is common knowledge that the offering or giving, and asking for or taking, bribes and secret commissions were especially aimed at by the prevention of corruption act, 1906. It is not so well known, however, that the act also deals with another offense.

"If any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal; he shall be guilty of a misdemeanor."

The maximum penalty is a fine of £50 and four months' imprisonment with hard labor, on summary conviction, and a fine of £500 and two years' imprisonment with hard labor, on conviction on indictment.

It is comparatively seldom that the act has been relied upon to prevent the use of false documents. But attention may be drawn to three typical convictions.

(*a*) A London solicitor informed a country client that he had arranged with a surveyor to value some property for a fee of £10 10s. The client sent this sum, but out of it the solicitor privately demanded, and received, £3 10s. from the valuer. A second valuation being necessary, a fee of £3 3s. was agreed to by the surveyor, but the solicitor wrote to his client representing that the agreed sum was £5 5s. He was found guilty on both charges, and in respect of each was fined £50 and ordered to pay £21 costs, or £142 in all.

(*b*) A news agent made overtures to a newspaper "returns clerk," and induced the latter (who was acting under the instructions of his employers), to give a false receipt, namely, for 50 quires more than the number of newspapers actually returned. The news agent then gave the clerk £1 14s. 3d., which was half the price of the quires wrongly credited. For this, at the central criminal court, the news agent was fined £10, and sentenced to one month's imprisonment in the second division.

(*c*) A motor and cycle repairer in a provincial town sold two gallons of petrol to a driver and received 6s. He gave a receipted bill for 9s., made up thus: Four gallons of petrol, 6s.; 7 pounds of carbide, 3s. For this he was fined £5 5s. and £5 19s. costs.

It may not be possible to prove positively an intention to deceive, but the intention may be implied by, or inferred from, the circumstances. It is not necessary to prove that any person has been actually defrauded.

Receipts are often given in which the discount allowed to the payer or agent is not disclosed, and double invoices are commonly issued, one for the agent and one for the principal, each invoice giving a different total.

It must be clearly understood that the portion of the act quoted was designed to prevent and punish dishonest transactions of this kind.

SPIES IN BUSINESS—THE BETRAYAL OF TRADE SECRETS.

The betrayal of important trade secrets is generally brought about by bribery, and one of the reasons why important business houses throughout Great Britain have banded themselves together in a league is to circumvent commercial spies by means of the prevention of corruption act. The maximum penalty in a police court is a fine of £50 and four months' imprisonment with hard labor, but if an offender is committed for trial he may be fined £500 and sent to prison for two years with hard labor. It may be well to state that those who ask for or receive a bribe or offer or give one are considered equally guilty.

A few cases will show what manufacturers and others have to guard against and what punishments have actually been imposed.

The managing director, well known in London, of a Swiss company, anxious to learn some secrets of the manufacture of silica, tried to bribe the employees of a British company engaged in the industry by the offer of money and of better paid jobs. He was sentenced to six months' hard labor, and a friend who aided him and one of his commercial travelers were also sent to prison—the former for four months and the latter for one month, hard labor being ordered in each case. Both the longer sentences were appealed against unsuccessfully.

A young German was charged with giving money to the employees of some textile printers and velvet embossers carrying on business at Leeds, in order to discover a secret process of printing velvet. He was fined £50 and ordered to pay costs in addition to £100, which he offered as compensation to the Leeds company.

A chemical laborer offered a good position in America ,and also commission, to an old companion of his engaged at some English chemical works. He wanted some drawings of apparatus, which were secret and of the utmost importance. He was fined£20, and also £5 for receiving stolen documents.

Two members of a firm trading in typewriter supplies offered 10s. and a commission to a clerk of a rival firm for a list of the latter's customers. Both were fined £50 and £10 10s. costs. A bottle manufacturer was fined £20 and £10 10s. costs, and a commercial traveler £10 for similar offenses. There have been a number of cases of this kind.

A quantity clerk in new employment offered the foreman of his former masters a commission if the latter would report any new business which might come to the foreman's knowledge. He was fined £5 and £5 costs.

A commercial traveler who tried to bribe the head porter at a hotel so that he might obtain a list of the visitors was fined £5 and £10 10s. costs.

These cases are typical of a large number, and there would be many more if employers were alive to their own interest and were acquainted with the remedy which the law affords.

STATEMENT OF CAPT. WILLIAM H. WESCOTT. PRESIDENT AND BUSINESS MANAGER OF THE MASTERS, MATES, AND PILOTS ASSOCIATION OF THE PACIFIC.

Capt. WESCOTT. I heard the last speaker say that the masters and the engineers on board the ship are the ones that naturally would receive it. I want to say that there are but very few ships in the United States to-day that are not managed by a managing owner. He has the right and he exercises that right of purchasing everything on board the ship and he sends it on board the ship. The master signs for it, he does not know what the man paid for it or anything else, and it is used on board of the ship. It may be of an inferior quality; we do not know. Many of the managing owners only own a small interest in the vessel and still they are the managers. They

do the contracting for all stores. I know many, many companies where the master even could not buy a pound of butter or a head of cabbage.

The engineers have nothing to say regarding the payment for coal, or the payment for oil; they tell them how many barrels of oil they wish for the voyage or how many tons of coal.

On foreign vessels it is a great deal different. The master receives about one-half, on the tramp vessel, what the master would receive on American vessels. But he is the agent of the vessel. He gets a certain percentage—he contracts for all freight and he gets a certain percentage for looking after the vessel's business at foreign ports. Those men all receive a commission, they receive a bonus for the freight they get. Always, when they buy supplies, why there is so much given them. When they contract for the longshoremen's work, especially out in the Orient, they make far more than the master on board the American ship, at the end of a year. Then you will hear the shipowners say masters on board American ships and the crews are getting so much more than they are on foreign vessels. It is not a fact. In 1914 (I believe there is a copy of it here) I worked up about 40 different companies, foreign ships and American ships, and there was but very little difference between the two.

Now I do not like to hear men standing up before the committee and saying that the masters and the engineers on board ship do thus and so, because I know on American ships that is not a fact to-day. It was in the olden times—the masters did the same on American ships as they are doing on British ships to-day. But now every American ship, as you know, has its agents in foreign countries. The agent looks after that; he looks after the cargo. The master has nothing to do with it. If the master gets in an out-of-the-way port, and the vessel is in distress and needs repairs, of course, the law permits him to get out a bottomry bond to obtain the money to repair the vessel until she can get to the next port. But I think there is very little of it. That is why I can say we are not against any bill of that character, because it does not affect the American masters or American officers in any way; but I think whatever bill goes through, if it includes the master, should also include "other persons" as well.

Mr. ROWE. I think so, too.

Capt. WESCOTT. I think that is very essential so as to stop anybody else. I may say that the masters of American ships to-day may, of course, once in a while—we can not tell. There are some parties who only own one or two vessels and do not have any agents. When the vessel is away from her home port, the master on that vessel will act as the agent.

Now, I want to say that Senator Jones of Washington introduced the bill to give the master the right of a lien on a vessel for wages. Probably there are many members of the committee who do not realize that even the master of an American ship, should the owner owe him $2,000, he can not put a lien on the vessel for his wages. He is not permitted to do so. Every other member of the crew can; and on account of the agency being taken away from the master, it leaves him absolutely helpless in so far as collecting his wages are concerned if the owner feels like not paying him, because at the time that law was introduced they looked upon it in this way, that the master handled all the money, and naturally he would see that he got his. But now he does not handle the money; the other fellow handles it.

I believe that is all I care to say with regard to that.

Mr. MILLER. I have nothing more, Mr. Chairman, except Mr. Skinner will be present to-morrow.

I thank the committee for the hearing.

(The committee thereupon adjourned.)

COMMITTEE ON THE MERCHANT MARINE AND FISHERIES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., January 16, 1920.

The committee met at 10.30 o'clock a. m., Hon. William S. Greene (chairman) presiding.

The CHAIRMAN. We are ready to hear from you, Mr. Skinner.

STATEMENT OF MR. D. E. SKINNER, SEATTLE, WASH., SKINNER & EDDY CORPORATION.

Mr. SKINNER. It is a rather difficult thing, Mr. Chairman, to speak to a subject of this kind, because it is so self-evident that a measure of this nature should be enacted into law it does not seem that it would be necessary to offer any testimony in favor of it. I do not believe if a bill should originate at the present moment to make it a penal offense to commit murder, that anybody would have to appear down here to advocate the passage of the bill. Yet I never knew of any particular instance in my own life, personally, that I could swear to, where murder was committed; but I guess we will all admit there is murder committed in the United States and in the jurisdiction of the laws of Congress.

Mr. CHINDBLOM. Still, there are only certain cases in which Congress would have jurisdiction to pass laws with reference to murder, and so with reference to any crime. They are only crimes committed under certain conditions and within definite limitations where Congress has any jurisdiction over them.

Mr. SKINNER. I assume, sir, this committee has jurisdiction over bills covering this particular subject, applying to the conditions of every nature surrounding ships that fly the American flag.

Mr. CHINDBLOM. I think there is no doubt about that; but what I mean is Congress does not necessarily inherently have jurisdiction over the committing of a crime.

Mr. SKINNER. But if it does, it should not be reluctant to exercise its jurisdiction.

Mr. CHINDBLOM. Certainly not.

Mr. ROWE. Are you going to make a statement with reference to your company or with reference to the general situation on the Pacific coast?

Mr. SKINNER. At the time we were asked to take over what we call Plant No 2. to increase the facilities of production during the time they were urgently needed by the nation, a contract effected between the Fleet Corporation and the owners of Plant No. 2 excluded the dry dock and permitted them to remove it. But in pro-

ducing the quantity of ships that we did on 10 ways, we felt it was absolutely necessary for us to have a dry dock; that we could not be dependent upon the congested conditions of other docks or possible competitors and, in fact, competitors for the necessary care that might eventuate in any way with reference to ships we were constructing, launching, and commissioning, and which aggregated four a month toward the latter end of our program until we completed it the middle of December. So we built a dry dock in lieu of the one they had taken away from Plant No. 2.

Having known the practice, not only of dry docks and repair plants, but also prevalent with captains who came to that harbor for cargoes and asked to have extra stores charged which were not put on the ship, or 10 per cent added to the bills which they would O. K. and which became a lien against the vessel and necessarily payable by the owners, for years in our large lumber interests there, as we had been operating the oldest mill on Puget Sound and the principal export mill using the largest number of vessels in the harbor for 60 years, we had assumed when we became interested in the lumber business there 20 years ago that we would not pursue any such practice as that—that it was not necessary. And when we decided we had to build this dry dock I instructed our general manager, who had charge of the contracting division of our business for dry docking and repairing other vessels, not in any case or any place to offer anyone any sort of a gratuity, graft, or payment of any kind to secure the privilege of the dock and facilities for the vessels. The general opinion was in that event that we would have a dry dock alamort, because the practice was so commonly known all over the world and so commonly pursued all over the world. And possibly there were extenuating circumstances to a certain extent years ago when foreign captains especially got a very small sum and were expected by the owners to make up their income from these fees or gratuities, or whatever you might call them, but which do not prevail to-day because the officers are getting very handsomely paid. Nevertheless, those instructions were issued and remain in effect, of course.

It seemed to me at the time it was rather unfair to have to invest the very serious amount we did in an enterprise that might be jeopardized, because we were unwilling, not needing to secure money through such dirty methods as that, and to have the investment, perhaps, become entirely useless. And that was what induced me, I think, at the time, to write Mr. Miller with reference to it, and the outcome was Mr. Miller's bill.

Mr. ROWE. Did you have any communication with the Shipping Board and the Emergency Fleet Corporation about building this dry dock?

Mr. SKINNER. They were well aware we were going to replace the dry dock which they took away, in that exact form.

Mr. ROWE. What do you mean, "Took away?"

Mr. SKINNER. At the time we took over Plant No. 2 there was a dry dock there, and the contract for Plant No. 2 permitted the previous owners to remove the dry dock, which they did, and, incidentally, additional dry-docking and repairing facilities in the harbor, leaving our original plant and Plant No. 2, which were merged merely

by tearing down a fence—because they were adjacent—without the dry-dock facilities which we thought we would require for ourselves. In a similar fashion, the principal tugs in the harbor were offered for sale, and at that time they were sufficiently valuable so that they were bid on by various interests from San Francisco, Vancouver, and all along the seacoast.

Mr. CHINDBLOM. When was this, in point of time?

Mr. SKINNER. In June, 1918. We commissioned our dry dock immediately, and started operations in January, 1919. I had to protect our vessels when they were first on trial trip, and the condition of their auxiliaries was absolutely unknown, in some fashion, and I had to buy the principal tug company's interest there in order to retain those tugs in the harbor.

Mr. CHINDBLOM. Did the Shipping Board take away the dry dock?

Mr. SKINNER. I did not ask the Shipping Board if I might buy those tugs, and do not remember that I had any correspondence with them about it. I simply knew I had to keep them there, because I could not safely make the trials of our vessels, especially in foggy weather and with all the indiscriminate kind of craft plying around harbors of that kind, because it would be dangerous to them and dangerous to us—to the passenger boats, and lighters, and tugs, and everything else—without being able to protect our vessels with the tugs.

Mr. CHINDBLOM. Did the Shipping Board take away your dry-dock facilities?

Mr. SKINNER. They simply did not include them in the purchase of Plant No. 2, which, naturally, gave the owner of Plant No. 2 the privilege of removal and, as it was very valuable, he naturally removed the dry dock and started additional dry-dock facilities in another location in the harbor.

Mr. CHINDBLOM. And left you high and dry?

Mr. SKINNER. Yes.

Mr. ROWE. How much did your dry dock cost?

Mr. SKINNER. The original entry on the books was $934,000.

Mr. ROWE. How many boats did you build, all told?

Mr. SKINNER. Seventy-five we will have completed by the 1st of February.

Mr. ROWE. Was that your entire contract?

Mr. SKINNER. We built 65 vessels under requisition for the Fleet Corporation and direct contract—57 of them a direct contract. Six had been built and delivered prior to the requisitioning act and one, I think, subsequently, for private interests.

Mr. ROWE. Were those all wooden ships?

Mr. SKINNER. No, sir. There were some wooden ships we built a good many years ago, but we were building steel ships entirely, and of course were not interested in wooden ships. We have also built four vessels for ourselves. The last one will be commissioned the 1st of February, making 75 all told.

Mr. CHINDBLOM. As I understand it, in building this dry dock, you were confronted with this proposition of concessions and gratuities, graft, and fees?

Mr. SKINNER. I might tell you a little circumstance that happened at the plant just recently. We secured one of the Japanese

boats that came into the harbor for dry docking and repairs and with the thorough understanding that there were to be no commissions to the captain, no fees, or to the engineer or the officers. How we got it, I do not know, unless the other plants were pretty fairly occupied at the time. The captain came in to our general manager's office repeatedly after his 5 per cent, which would have amounted to about $3,500. Finally, he became so insistent in his demand and so annoying to our general manager, after he had told him repeatedly he could not get it, and he knew he could not get it when he brought his boat to dry-dock, that Mr. Seaborn said, "Now, by the way, we have a chauffeur out here who speaks very good English and, of course, must speak good Japanese, as he is a Japanese, and I will call him in and have him explain to you, if you do not understand, that you can not get any commission." The captain said, "Me not need him; me understand me get no commission, but me don't know why."

The difficulty with this is not that you merely pay compensation to the officers of the vessels, but the ramifications of dishonesty of that kind, which is a rank dishonesty, reach so far that it is immeasurable. It not only reaches through your own organization, because if you had anyone in your employ to subborn others, to offer them money (because they can not give them checks, because the entries can not appear honestly on the books so that you know what it is for) I have always considered if I lied to one of my assistants, to one of my employees, I could expect them to lie to me. And I feel as though that kind of dishonest transaction carried on by us would bring dishonesty in our own organization. I also feel it is particularly disastrous to the vessel as well as the owner, because the captain or the crew, whichever it may be, who gets these gratuities, often sees that something unusually necessary is required to be done to the boats so that the fees may be paid; and the boats are run down. Then, of course, on top of that, if we can pay a captain a 5 per cent commission on a $50,000 bill, it is not very difficult to make that bill $75,000 and, consequently, increase the fees, and the owner might be the Fleet Corporation of the United States Government; it might be one of our vessels—we have several captains in our employ—or it might be a foreigner, or it might be anyone.

Mr. CHINDBLOM. We were told yesterday that this species of graft has practically disappeared from the American boats and that the evil now is practically confined to foreign boats.

Mr. ROWE. That may be, but I doubt it.

Mr. SKINNER. It would be well not to have the price held up all the while even to Americans. Americans are only human.

Mr. CHINDBLOM. Oh, no; but I wanted to know if that was confirmed by your experience.

Mr. SKINNER. We had a case the other day: One of the principal corporations of the United States, who pride themselves, I believe, on the personnel of their representatives on the ships, had one of their vessels on our dock, and because he was advised, without going to our general manager's office, that there was nothing coming to him, he has bedamned the whole concern ever since, and has since said, openly, what we have suspicioned, because it is well known to our general manager that he had no difficulty in San Francisco in having

an I. O. U. issued and torn up and thrown in the waste-paper basket. I am quite convinced that the corporation would not believe that, so I have not carried the story to them.

Mr. CHINDBLOM. That simply shows it is not confined to foreign vessels. That is really what I wanted to get at.

Mr. SKINNER. It would not be confined to foreign vessels. And if it is, sir, there are foreign ports in which American vessels are also repaired at odd times and given special attention and secure supplies; so that American vessels reaching foreign ports would necessarily be subject to the reverse condition of the foreign vessels coming into our ports.

Mr. CHINDBLOM. Speaking of the way a system of this kind grows up, I recall when I was a boy, a neighbor of ours loaded ships at the Chicago River and the neighbors were all jealous of him because every night he would bring home the finest dainties in the way of food that he picked off of the boats, a petty stealing, of course, and in a larger way it gets the commercial name of commissions.

Mr. SKINNER. It will get to the morale of any organization. It can ruin them all, not only those in the control of the ship, but in control of the American plants that are handling the ships in their repairs and dry docking.

Mr. ROWE. From your knowledge, in England where they have a very strict law against accepting graft, do they try to enforce it in English ports as to repairs, for instance, on American ships and Japanese ships?

Mr. SKINNER. I can not answer that, sir, from personal knowledge. At the moment, I might say there are two concerns at least that would create additional dry dock and repair facilities in one of the principal ports on the east coast, where they are particularly needed, if it was not for the fact it is known that there would be no use unless you wanted to perjure your soul to get into the business; and the majority of men, when they get in a position where they do not need to do that, to secure additional money, refuse.

Mr. CHINDBLOM. Of course, they can go into other businesses, and that is what they will do, and invest their money elsewhere.

Mr. SKINNER. They can remain at home with their own business and stay at home, where there are plenty of opportunities.

Mr. ROWE. Do not the owners of ships, though, very often name the place where repairs are to be made?

Mr. SKINNER. I think they do.

Mr. ROWE. In New York City, I think, they do largely, do they not?

Mr. SKINNER. I think they do.

Mr. ROWE. And many of the English ships have an agent in New York City, most of the English ships have, and they attend to all the repair work.

Mr. SKINNER. A good deal of the repair work has to be done, I understand, by the representative, and you may communicate, even if you have not a regular agent in the port. But the shipowner is to a great extent rather helpless. If the captain reports the vessel is in trouble in foreign waters, you are, in fact, compelled to accept his statement that the vessel requires attention there, and you can not very well, unless your ramifications of business are so large that

they reach all of the ports of the world or those large enough to be adjacent, have some person representing you who can assist you in such instances as that. I should say in New York that most of the lines plying there all the while have representatives, but I doubt very much if the tramp steamers have.

Mr. ROWE. I do not suppose they have. And, of course, a captain can make it convenient to repair at some other port, if he feels the necessity of it, on a tramp steamer.

Mr. SKINNER. A good deal of the foreign business which you mention, especially on the Pacific, I think is purposely contracted in foreign ports—not particularly, say, the Japanese. If they do not happen to hit a squall or to be in dire distress, and repairs can be deferred until they can get to Japan, they will wait until they get there. Now, of course, we have no province or interest in what they do there, but I presume the captain must be satisfied with what he gets in Japan, or he would see the damage was severe enough to have to be attended to here. I will frankly state to you the pay, I think, the Japanese captains get for the repair bill, when the repairs amount to $50,000, $70,000, or $100,000, in case of severe damages, if a 5 per cent commission is to be paid, if it is to be called such, it is a considerable sum in addition to what they receive. To speak directly to that point, as the owner of a shipyard, it would be essential for me to criticize, at least, if not impugn, the honesty of the purchasing agent of our corporation, which I could not do, even in mind or thought, but I have heard here, as in most instances that are supposed to be relevant elsewhere, that influences are used with the purchasing agents to use a certain material instead of some other material.

In fact, I have had some correspondence from parties who know that I have had some interest in this measure asking me to help support their interests before the committee. But, as I say, I can not speak to that point, because I am as positive of the honesty and integrity of my assistants in my enterprise as I am in my own integrity toward the stockholders of the corporation. But it could well come within the purview of the operation of this bill.

Mr. CHINDBLOM. I think it does. It says it shall be unlawful for the master of any vessel or other person having authority to contract for repairs, etc. It is not confined to men aboard the ship.

Mr. SKINNER. Does it also specifically say, in addition to repairs, supplies?

Mr. CHINDBLOM. Yes. Having authority to contract for repairs, supplies, or necessaries for any vessel.

Mr. SKINNER. That is comprehensive.

Mr. ROWE. Is there anything else, Mr. Skinner?

Mr. SKINNER. Nothing that I know of, sir.

Mr. MACDONALD. In answering Mr. Rowe's question concerning the enforcement of the English act, I am in quite close touch with Mr. Leonard, who is secretary of an English association for the enforcement of the English law. According to the bulletins issued by that organization, the law is fairly well enforced in England, but they consider the marine industry the black spot on British industry. That possibly is the part of English commerce that has yet to be reached by the bill. The organization is composed of business men throughout

the United Kingdom and includes trade associations, and all that; but so far they have not been able to make much headway in the marine trade.

Mr. HARDY. You mean in enforcing this antigrafting law?

Mr. MACDONALD. In England; yes, sir.

Mr. ROWE. Only their act is broad; it takes in all lines of trade.

Mr. HARDY. As it should.

Mr. BANKHEAD. Why do they find it peculiarly difficult in enforcing the provisions of that law with reference to the marine industry?

Mr. MACDONALD. I would say that laws of this kind take more than the mere passage of the law to make them truly effective. I do not suppose that any law of this kind, for that matter any criminal law, is 100 per cent efficient. It must have public support. In England it does have public support and they enforce the law strictly and impose heavy sentences, but so far they do not seem to have had the support of the marine interests as they have had in the textile and other industries there that have cooperated very closely. But for some reason that I am not acquainted with the marine trade does not seem to be in close touch with the other organizations.

Mr. BANKHEAD. In other words, I gather from your statement that the sentiment among those affected by the law who are in the marine industry is opposed to the enforcement of the law?

Mr. CHINDBLOM. Or indifferent.

Mr. MACDONALD. Or consider it so thoroughly fastened on the trade that they are hopeless of getting rid of it.

Mr. HARDY. Let me suggest a reason that probably enters into the situation: Marine purchases are made wherever a boat plies. A vessel navigating the ocean may buy either on this side or the other side—in America or Europe, in France or in England—and every country feels if they were to hamper their merchants in the negotiation of trades with other shops that their ships would go elsewhere for the trade; and if the master on the ocean can get into France and get a rake-off and can not get it in England, he will take his trade over there. Is not that probably at the bottom of the difficulty of enforcing this law?

Mr. MACDONALD. I think it may account in large measure for the difficulty in the marine business, and yet the excuse is only an excuse; it is not a justification. That excuse can be offered to-day by every manufacturer who says, "If I do not pay graft, my competitor will."

Mr. HARDY. I know, but it is more particularly the case when you have no law in effect. The English law does not affect the French merchant.

Mr. MACDONALD. That is true.

Mr. HARDY. And consequently he says the situation resolves itself into a question of paying fees in his own country and letting the merchant in his own country get the trade of the shipmaster, rather than let it go to the merchant on the other side of the water.

Mr. MACDONALD. That may account, possibly, for the difficulty.

Mr. HARDY. And we are going to find, if we enforce this law, the shipmasters who want the graft taking their trade somewhere else—that they are going to place a large proportion of their orders somewhere else.

Mr. ROWE. But, on the other hand, I believe that the owners of the ships and officers of the companies, if we enforce the law strictly, will want to trade and want to have their repairs made in our harbors.

Mr. HARDY. That is a question of how it is going to work out. I do not know.

Mr. ROWE. I believe we will lose some of our work, but gain other work that will more than make up for it.

Mr. HARDY. That is along the line that honesty is the best policy.

Mr. CHINDBLOM. I can see another way, I think, in which masters can make use of the present situation. The world is their market; they can go anywhere and they can go to a dealer in supplies anywhere and claim, whether it is true or not, that if they do not get their fee here they can get it elsewhere; and the merchant is unable to refute that statement; because the business is scattered all over the world.

Mr. HARDY. This business of graft is the most vicious element in our commerce. How to meet it is the difficulty, but I am for trying every possible way that we can. Unless I hear some definite argument that it is going to do harm, I want to try to enforce the law. I do not think there is any question that it is a moral turpitude that ought to be punished.

Mr. CHINDBLOM. Whatever be the result, there can be no justification for failing to pass a law to stamp out crime.

Mr. HARDY. No; that is the situation.

(The hearing was thereupon closed.)

Part 2

TO PROHIBIT THE PAYMENT OF GRATUITIES TO THE MASTERS OF VESSELS

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Box 89

HEARINGS

BEFORE THE

COMMITTEE ON THE MERCHANT MARINE AND FISHERIES

HOUSE OF REPRESENTATIVES

SIXTY-SIXTH CONGRESS
THIRD SESSION

ON

H. R. 9572

THURSDAY, JANUARY 13, 1921

PART 2

WASHINGTON
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COMMITTEE ON THE MERCHANT MARINE AND FISHERIES.

HOUSE OF REPRESENTATIVES.

SIXTY-SIXTH CONGRESS.

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THOMAS H. CULLEN, New York.

RENE G. DE TONNANCOUR, *Clerk.*

TO PROHIBIT THE PAYMENT OF GRATUITIES TO THE MASTERS OF VESSELS.

COMMITTEE ON THE MERCHANT MARINE AND FISHERIES,
HOUSE OF REPRESENTATIVES,
Thursday, January 13, 1921.

The committee met at 3 o'clock p. m., Hon. William S. Greene (chairman) presiding.

The CHAIRMAN. The committee has under consideration H. R. 9572, introduced by Mr. Miller, a bill to prohibit the payment of gratuities to the masters of vessels, or other persons, for the purpose of inducing or securing contracts for repairing vessels or furnishing vessels with supplies or other necessaries, and we will be glad to hear from Mr. Kirlin at this time. We have had a previous hearing on this bill.

STATEMENT OF MR. J. PARKER KIRLIN, NEW YORK, REPRESENTING THE AMERICAN STEAMSHIP OWNERS' ASSOCIATION.

Mr. KIRLIN. Mr. Chairman, the suggestion came to the American Steamship Owners' Association to the effect that the committee would like to hear the views of the association upon this bill. This association, as you know, is a voluntary association organized not for profit but merely for the protection of the interests of the American steamship owners and is limited entirely to owners of American steamships and includes practically all of them.

The matter has received consideration, and they have asked me, as their general counsel, to appear before you and express their views. I may say, in a word, they indorse the bill and see nothing in it at all which is in any way objectionable. There are certain classes of gratuities which have been customary for many years, which the association would not like to see interfered with, but those are not touched by this bill in any way. The gratuities I refer to are gratuities such as are paid by those who charter ships from shipowners and where the gratuities are paid by the charterers to the masters and officers to insure careful watching of the cargo, prevention of thefts, proper delivery, expedition of the voyage, and economical consumption of fuel, which is ordinarily paid for by the charterers, and not where there is a bonus or gratuity having in effect a rather bad odor on account of the granting and reception of improper gratuities. There are proper ones and improper ones. But as far as this bill is concerned it is aimed solely and directly at the granting of bonuses and gratuities, which every shipowner desires to see suppressed, that relate only to the granting of gratuities for improper purposes, for the improper granting of contracts, or for the improper execution of contracts. And every shipowner in our association, and I think every American shipowner everywhere would be very glad to see rigorously done away with every improper gratuity such as is aimed at in this act.

Mr. CHINDBLOM. I observed that you mentioned the execution of contracts. The language in line 8 of the bill, as you will observe, is "for the purpose of inducing the making or placing of any contract, express or implied, for repairs, supplies," and so forth. Do you think that includes the execution of a contract?

Mr. KIRLIN. Did I say execution of contracts?

Mr. CHINDBLOM. I thought you did. In all events, that would be an important element, would it not?

Mr. KIRLIN. Yes.

Mr. CHINDBLOM. Gratiuties might be given for failure to execute a proper contract or for executing a contract in a certain way.

Mr. KIRLIN. I can imagine where a gratuity might go a little further; I can imagine where a gratuity might not be given merely for the placing of a contract, but might be given for the O. K. of a contract which had not been properly executed.

Mr. CHINDBLOM. Or for the wink of an eye at some violation of the contract?

Mr. KIRLIN. Yes.

Mr. WHITE. Or some particular construction of the contract.

Mr. KIRLIN. Yes. But within the purview of what is intended here, without reference to the particular use of words that would cover it, I say the shipowners are all agreed the policy is a wise one and all indorse the object you have in view. I think you might very well amend this by some appropriate words to include the approval of an incorrect execution of contracts as well as merely the inducing of the making of the contracts in the first instance. I see nothing here that trenches upon, in any way, the granting of what I have called the customary gratuities, which are entirely proper and lawful. And I do not think, therefore, any amendment is needed in order to conserve or permit the granting of those old-fashioned, long-customary gratuities of a perfectly proper and legal character.

There is only one further thought that occurs to me in connection with this, gentlemen, and that is whether it is really necessary, in any actual sense. I think probably the laws of every port into which an American vessel may come now make such an offense, as created in this bill, punishable in the State courts. A breach of agency or the receipt of improper gratuities in connection with the agency involving a betrayal of duty, would be a breach of duty within the laws of the State of New York, and I have no doubt of the State of Massachusetts, and probably every other State in the Union. The only real effect of this would be to transfer the jurisdiction for the punishment of offenses of this kind from the State courts into the Federal courts. Whether you think that is really necessary or not is a question of national policy as to which I have no opinion. I only say this, that the Federal courts, as you know, are manned none too strongly at present. There have been many new offenses against the United States created in the last six years and the criminal calendars of the Federal courts are already very much overburdened. In the State of New York, for example, where we have four district judges now, it is necessary to bring from other districts, to-day, more than that number in order to enable them to keep up with their criminal docket and the additional causes that they have thrust upon them for disposition under the new criminal laws.

The CHAIRMAN. So, you think it might be well to broaden this to cover the laws of any State?

Mr. KIRLIN. I was not mentioning that in that connection especially, Mr. Chairman, but, rather, I was quering whether you might think it necessary to keep on creating new Federal offenses which are already punishable in the ports in which ships trade under the laws of the States where the ports they enter are located.

Mr. EDMONDS. Are those laws carried out in the States?

Mr. KIRLIN. Personally, I have been practicing in admiralty for 35 years, and I have never heard of a man being arrested yet for accepting a gratuity.

Mr. EDMONDS. And yet you know it has been going on?

Mr. KIRLIN. I know it has been going on; but I do not think we can stop that by legislation altogether. It will probably go on, and there will be people who pay and accept gratuities even if this bill is enacted. It is a secret business, and they conduct it secretly anyhow.

Mr. CHINDBLOM. Would there be any use in our declaring gratuities unlawful unless we provide a penalty for the offense.

Mr. KIRLIN. No. Yet you are really up against the proposition, as I see it, whether you will create an additional offense for this, or, rather, leave the laws of the States to punish the offenders where the offense is already in existence.

Mr. EDMONDS. Do you not think it would be a good thing to do, the States having failed to carry out the laws they already have on the statute books at this time?

Mr. KIRLIN. I do not want to express any opinion on the action of the States. I think the abuse which has led to the introduction of this bill has been glaring, due to the operation of the Shipping Board ships, which is a matter of comparatively recent development. There is no doubt, with the best of intentions, operators have not been able to draw suddenly into this industry such a large number of honest qualified people as there are in the personnel of our competitors, which has grown up as a development of generations. Men have been trained to it and grown up to it, and it is a great strain upon the morals of an entirely new class, suddenly brought in to man a large number of vessels, to expect them to take responsibility of this sort for moderate pay, and passing large sums of money through their hands, without taking a little rake-off. The moral overstrain, if I may speak of it in that sense, has been too great for them to resist.

Mr. CHINDBLOM. But still, I understood you to say that has continued for many years before the Shipping Board came into operation?

Mr. KIRLIN. I think it has been practiced ever since I can remember.

Mr. CHINDBLOM. You think it grew worse during the operations of the Shipping Board?

Mr. KIRLIN. Yes; very much so. It was not a very serious matter prior to that time. I know in years gone by, 20 years ago, I used occasionally to see foreign contracts made between a foreign captain and owner in which it was provided he was to account to the owner for the bonuses paid to him, recognizing all the world over this

bonus business of allowing a little rake-off for coal, dry-docking, and repairs was a pretty world-wide practice.

Mr. EDMONDS. I think you are pretty nearly right. Of course, I had a good deal to do with the shipping business in the early eighties and nineties, and along there, but it looks bigger to-day because we have a good many more ships.

Mr. KIRLIN. It was bigger because there was more of it. I think it was very moderate in the olden times.

Mr. CHINDBLOM. They have raised the ante?

Mr. KIRLIN. They have raised the ante, and the bills are so much more, the expense is so much more. A repair bill that used to cost $1,000 now costs $4,000 or $5,000, and coal is so much more, and it is a good deal easier to take a little rake-off when the prices have such a wide margin.

Mr. EDMONDS. This word "gratuity" does not affect any arrangement between the owners and captains, or officers, does it?

Mr. KIRLIN. No; I think not. You are referring to the customary gratuities which I have spoken of as being legitimate?

Mr. EDMONDS. Yes.

Mr. KIRLIN. I do not think it touches them.

Mr. EDMONDS. You think this bill would not affect them?

Mr. KIRLIN. No.

Mr. EDMONDS. During the last few years there has grown up, particularly with Shipping Board operators, a practice of having subsidiary companies to do their purchasing. Would this bill cover those subsidiary companies?

Mr. KIRLIN. It would if they gave them any gratuities, I suppose.

Mr. EDMONDS. Suppose they gave them profits?

Mr. KIRLIN. I should not think it would.

Mr. EDMONDS. Suppose they organize a company in which they were the principal stockholders and that company purchases the supplies for the ship or purchases their coal?

Mr. KIRLIN. That is a matter that reaches back a great many years, too. It has been a practice for agents of foreign lines in New York, and in other cities, to have wharf and terminal companies which they control. That was perfectly legitimate, because the wharf charges of those agents who did not have subsidiary companies would be a certain amount, say $150 for the dock or 45 cents a ton for loading coal. Now, that work was done—stevedoring work I am thinking of more especially—by firms who made a business of stevedoring. These agents thought there was an increment of profit in that and, therefore, instead of paying 45 cents a ton to the ordinary stevedoring firms they would form a wharf and terminal company which would do this work under their own guidance, and they would select the personnel. They got a certain measure of overlook arising from their control of it, and they charged exactly the same prices for doing this work which were current in this port as the charges of independent firms. And I should think as long as a subsidiary company did not make any overchage it would not be illegitimate to allow an operator to pay to a company which he overlooked himself, and in which he had an interest, the same amount which he would have to pay to somebody else who had a company and overlook and interest.

Mr. EDMONDS. That company would not be affected by this bill, I suppose?

Mr. KIRLIN. No; I should say not.

Mr. EDMONDS. What I am coming to is this: Say that an operator of Shipping Board vessels formed a company of some of his employees and himself to purchase the supplies for the ship, the coal for the ship, through the subsidiary company, and taking a profit for the subsidiary company?

Mr. KIRLIN. As long as the ship was not charged any more than current prices, it does not seem to me there is any crime about that.

Mr. EDMONDS. Would there be a possibility of knowing what the current price was in that case?

Mr. DAVIS. There is not any reason why he should be permitted to receive a bonus or anything else of value for giving the contract.

Mr. EDMONDS. That is what I am trying to get at, whether we ought not to go a little further in this bill. I was told—I never followed it up—a certain corporation, without mentioning the name, that is operating Shipping Board vessels, has formed with their employees a subsidiary company and that subsidiary company buys the supplies. Now, there would be no reason for that subsidiary company without it was worked for a profit. If the firm itself has the ability to purchase these supplies at a price, that must be the price of those goods, and if the subsidiary company can add a profit on top, for the subsidiary company, it comes out of the owners of the ship, and it then becomes a charge in the account of those men, charged up against the expenses of the Shipping Board ship.

Mr. KIRLIN. If there is any increment of profit taken out in that way, I should think that would not be a fair performance of the agency agreement of the operator with the United States Government.

Mr. HARDY. It seems to me what you want to get at is to prevent the seller and purchasing agent from combining together for the benefit of each other.

Mr. EDMONDS. That is what I want to prevent.

Mr. CHINDBLOM. And their doing it through a subsidiary concern.

Mr. EDMONDS. When it is done plainly, one fellow goes to the other and says, "Here, Bill, if you give me this order I will give you 25 cents a ton," and he puts it down in his pocket.

Mr. HARDY. There is no question that is corrupt.

Mr. EDMONDS. That man gets up to the head of this company——

Mr. HARDY. Which company?

Mr. EDMONDS. Of the company for which he was purchasing agent, and he recognizes the fact all these little things, which came along to him when he was purchasing agent, are going to his bookkeeper, stenographer, and a few others, and he forms a purchasing company and does all this purchasing through a controlling company.

Mr. DAVIS. What would you think of a provision, either an amendment to this or a new section, in effect making it unlawful to purchase from a company the officers or directors of which were employees of the Shipping Board?

Mr. EDMONDS. They would not be employees of the Shipping Board.

Mr. CULLEN. As I understand this bill, from what Mr. Edmonds and counsel have said, it is a general bill in its scope to cover and apply to everybody that would practice or permit the giving of

gratuities to shipmasters or shipowners for supplies, building of the vessel, or contracts of any kind, and I suppose it was inspired by some of the operations of the Shipping Board. Is that right?

Mr. KIRLIN. Yes; that has been since the war.

Mr. CULLEN. How would it affect vessels not directly under the supervision of the Shipping Board?

Mr. KIRLIN. Now, you are coming into the realm of the members of our association. I am just as anxious that their captains should not take graft as the Shipping Board should be to prevent their officers from taking graft.

Mr. CULLEN. Your company is entirely outside the Shipping Board; you are a private company?

Mr. KIRLIN. Our association represents private shipowners entirely.

Mr. CULLEN. A bill of this kind would reach your masters?

Mr. KIRLIN. Yes; but we already have legislation in the States, so far as that goes.

Mr. CULLEN. Do they object to having legislation for the purpose of keeping shipmasters honest?

Mr. KIRLIN. As I said, I think the legislation of our own State protects us, and if anybody made a complaint to the attorney of the State of New York I have no doubt an arrest would be made just as quickly as if the complaint were made to the United States attorney. I think the fact that it has not given rise to complaints and prosecutions in the past has been because, in the first place, that during the period when it has grown up to the largest extent our activities have been otherwise and they have glossed over a good many things that would not have been passed before the war and which before the war were not so serious. And I imagine they will abate, too; that as the prices of commodities go down the gratuities will go down.

Mr. CULLEN. As a natural consequence?

Mr. KIRLIN. I do not think this will be as serious a matter two years from now as it has been in the last two years. I imagine it is not as serious to-day as it was two years ago.

Mr. CULLEN. Are you familiar with the laws in all the States in regard to this?

Mr. KIRLIN. I know of New York and Massachusetts laws which would punish the offenses mentioned here.

Mr. CULLEN. We have a law in New York State along these lines.

Mr. KIRLIN. Yes; and I have no doubt they have in every State.

Mr. HARDY. Do you think there is any question but that the man who gets a gratuity from the seller of an article to the ship of which he is captain can be sued and every dollar recovered from him by a civil action, under the common law?

Mr. KIRLIN. I should say yes; for a breach of his duty as an agent.

Mr. HARDY. And not only that, but he has to report he paid more for the goods than he did, when he practically did not pay anything but the net amount the seller received.

Mr. KIRLIN. I think he would be subject to prosecution in any State in the Union.

Mr. HARDY. I think he would not only be subject to civil action to recover the amount but to criminal prosecution in every State

to-day. I think he would not only be liable to civil action but I seriously question whether he would not be guilty of embezzlement, because you turn over to the captain of the vessel money which is placed in his hands to be used for the purchase of goods, and if he buys $100 worth and pays $90 and puts $10 in his pocket, he has embezzled $10.

Mr. KIRLIN. Virtually.

Mr. HARDY. It is just a question, in my mind, whether you do not need the enforcement of the common law rather than to attempt to define and ramify all the different conditions that are met by common law.

Mr. KIRLIN. My feeling as a lawyer is whether it is not bad policy.

Mr. CULLEN. As to the language pointed out in the bill by my colleague, Mr. Chindblom, I think the phraseology of the bill in some particulars should be corrected, because under the provisions of it, as it reads now, it is far-reaching.

Mr. KIRLIN. It would relate now not only to officers but it would relate to any persons in an organization save of companies owning ships.

Mr. CULLEN. It would make them criminally liable for the acts of their servants.

Mr. KIRLIN. I do not know about that. I think I should hardly be inclined to agree with you about that.

Mr. HARDY. You can not make a man liable for the criminality of another without——

Mr. DAVIS. Without guilty knowledge.

Mr. KIRLIN. My feeling as a lawyer is, if you have at present an adequate remedy for a wrong, it is a bad policy to increase legislation by enacting a new law. There are too many laws now. But it might produce a moral effect which would be useful for the United States to pass a law stamping its universal disapproval on an act of wrongdoing of this character. That, I think, is the principal and only justification for additional legislation.

Mr. CULLEN. In the event of a bill of this character becoming a law as a part of the Federal statutes, what effect would it have on the laws of the other States, as far as prosecutions are concerned?

Mr. KIRLIN. I suppose the jurisdiction would be concurrent.

Mr. DAVIS. Just as is the case with regard to a number of other violations?

Mr. CULLEN. That would raise a nice legal question.

Mr. KIRLIN. Yes; there has been a great deal of talk about what is concurrent jurisdiction in the Supreme Court.

Mr. CULLEN. We have had that up before—the question of concurrent jurisdiction?

Mr. KIRLIN. Yes.

Mr. CHINDBLOM. There are plenty of offenses for which prosecutions may be had, either under the State law or the Federal law.

Mr. KIRLIN. They are rare, I think, Mr. Chindblom.

Mr. WHITE. This is not quite a case of concurrence, is it; it is the violation in the one case of a State statute and, in another case, a violation of a Federal statute?

Mr. KIRLIN. What I meant by concurrence was, if complaint was made to the district attorney of New York and there was a statute

covering the offense, the State court would probably have jurisdiction of it. And the same act might, if this bill should become a law, be a matter in respect to which complaint could be made to the United States attorney, which would then have to be tried in a Federal court. That is the sense in which I used the term "concurrent jurisdiction."

Mr. CULLEN. It might nullify State law?

Mr. CHINDBLOM. You mean practically nullify it?

Mr. CULLEN. Yes; nullify State law for all practical purposes and intents.

Mr. DAVIS. I do not presume the New York and Massachusetts laws on this subject give inquisatorial powers to the grand jury, do they?

Mr. KIRLIN. I can not answer that, I am sorry to say. I am not very expert in criminal law.

Mr. HARDY. I think the grand jury always has inquisitorial powers for any violation of the law of the State.

Mr. DAVIS. They would not unless it was expressly given. That might remedy the situation somewhat. Unless we should go to the extent of giving the Federal grand jury inquisitorial powers, it occurs to me the probabilities are this would prove a dead letter just the same as the State law has, and it certainly would unless the owners of these vessels who are interested would take it upon themselves to prosecute those guilty of the offenses defined in this bill.

Mr. KIRLIN. I suppose what has really happened in the past, the owners have discharged dishonest employees and let the matter rest just there and not give them any recommendation.

Mr. DAVIS. As you suggested a while ago, the moral effect of this might deter some of them from doing these things, but as far as the effect it would have on the State law I believe I am safe in saying it has been my observation that where the State and the Federal Government have concurrent power with regard to certain offenses the power and activity of one rather encourages and fosters the activity of the other; there is a sort of rivalry.

Mr. KIRLIN. It spurs them on.

Mr. DAVIS. When the State officials see the Government has gotten active in regard to a certain class of offenses, it calls to their attention the fact that public criticism will perhaps be directed against them if they do not do likewise. Does not that frequently occur?

Mr. KIRLIN. That may be so. If this law should be passed, it probably would come to the attention in a very direct and positive manner of a great many officers who did not know that there were State laws on the subject.

Mr. HARDY. Are there any classes of persons who might come within the category described in this bill, but would yet be morally guilty of no wrong? In other words, is there any way in which the spirit of this could be contravened? Suppose a man has a definite understanding with the owner of a vessel he buys for, although he occupies some other position, he gets a commission, wouldn't he come under that description?

Mr. DAVIS. That is contractual employment.

Mr. HARDY. I know. But wouldn't he be receiving a commission for the placing?

Mr. CULLEN. You might go further and say that where the company itself takes a discount off its bills in the final settlement of the bills it might come under the provisions of this law.

Mr. DAVIS. But this is modified by the phrase that the commission, bonus, gratuity, or sum of money or other thing of value "shall be received for the purpose of inducing the making or placing of any contract." You see, that is a consideration passing from the vendor to the purchaser of these supplies and is not a commission or arrangement between the owner of the vessel and his agent, the master.

Mr. HARDY. You might have such a condition as the owner authorizing his captain to buy goods at a certain price, and, if he can get them any cheaper, give him the benefit of it; I do not know whether this would touch that or not.

Mr. KIRLIN. These innocent people very often get hit by laws not aimed at them.

Mr. HARDY. That has often happened, and they did not know when they were being hit.

Mr. KIRLIN. In line 8, you might add for the purpose of "improperly" inducing the making or placing.

Mr. HARDY. Suppose you just change that to read: "if he should receive any bonus or gratuity or sum of money or other thing of value from a person furnishing supplies or making or placing such contracts for the purpose of inducing," etc.; make it clear he must receive it from that other party and not from his own employer?

Mr. DAVIS. In the first place, there is nobody who would want to prosecute the man you speak of, and, in the second place, it would not be possible to convict a man under those circumstances, because every one would know it was not intended to reach a matter of that kind.

Mr. KIRLIN. I think it would be well, in line 8, to put before "inducing" the word "improperly."

The CHAIRMAN. For the purpose of improperly inducing?

Mr. KIRLIN. Yes; or wrongfully inducing.

Mr. CHINDBLOM. Wrongfully, of course, would imply a criminal act.

Mr. WHITE. Why put in that word; where is the wrong, why is the wrong, and what constitutes the wrong? You have not defined it in the act. The word does not mean anything unless you define it in the act.

Mr. KIRLIN. Wrongfully means any breach of your duty, whatever that may be.

Mr. WHITE. Now, then, the question is what is the duty?

Mr. KIRLIN. I had in mind in suggesting this: Suppose a company has a large number of ships and it is giving all of its repair work to one yard as distinguished from another yard, in consideration of getting 2½ to 5 per cent discount from its ordinary rate——

Mr. WHITE. Yes.

Mr. KIRLIN. Now, that would not be a wrongful thing. But if the captain of a vessel had a general authority to get these repairs wherever he could get them the cheapest, and he got the repairs from somebody who would give him a 5 per cent discount, that would be a wrongful act.

Mr. EDMONDS. Would this cover a surveyor who raised his price in order to make a little for himself out of it?

Mr. KIRLIN. I do not think a surveyor would really come under this bill, nor is there any real abuse about surveyors, so far as I have ever known.

Mr. EDMONDS. I have some testimony in my desk that looks very bad for some surveyors.

Mr. KIRLIN. I think the surveyors, while they do not charge everybody alike, I do not think they give money back. I never heard of it.

Mr. EDMONDS. I do not mean they give money back; I am talking about making an improper survey by which certain sums are paid for repairs and the surveyor gets his out of that. Would this bill prevent that?

Mr. KIRLIN. Of course, that would ordinarily be checked; that would ordinarily be watched by the marine engineer or owner who checks their survey.

Mr. EDMONDS. That may come under private ownership, but it does not come in the Shipping Board, unfortunately.

Mr. KIRLIN. The Shipping Board has pretty competent surveyors in New York and other places, but the surveyors, I should say, would not be touched by this bill.

Mr. EDMONDS. It says "for repairs, supplies, or necessaries for any vessel, or the use of any dry dock or marine railway facilities for any vessel."

Mr. KIRLIN. But it says "who shall solicit, for the purpose of inducing the making or placing of a repair." A surveyor would not fall within those words.

Mr. CHINDBLOM. Receive or solicit.

Mr. EDMONDS. This case may have happened a few years ago, but there was a case where four surveyors each put up five fingers and the price went up $20,000, together with $20,000 extra for the dry-dock man.

Mr. KIRLIN. There must have been a very bad superintendent engineer on the job there.

Mr. EDMONDS. I am not quite so sure whether the engineer was not one of the four. It meant simply the addition to the price for pretty serious repairs to that vessel of $40,000. Would this bill cover that?

Mr. KIRLIN. I should not think so.

Mr. EDMONDS. It would be well to cover a thing like that, would it not?

Mr. KIRLIN. If you want to cover a thing like that, I think you would have to use some more words.

Is there anything more, gentlemen?

Mr. CHINDBLOM. With reference to enlarging the scope of the offense I would suggest, in line 8, after the word "making," that you strike out the word "or" and insert a comma, and then, after "placing," add "construing or approving," so as to make the whole phrase, beginning in that line 8, read: "* * * for the purpose of inducing the making, placing, construing, or approving of any contract."

Mr. KIRLIN. Yes; I think that would do that.

Mr. CHINDBLOM. I think you will pretty nearly cover everything then. Construing would include the interpretation, and approving would include almost anything that was done.

Mr. EDMONDS. Mr. Kirlin, I do not know whether the subsidiary repair concerns in New York are real things or whether they are inefficient; but there is a considerable number of concerns that do things that it strikes me the dry-dock man and the repair man ought to do themselves. For instance, there is down there in Whitehall Street a marine contracting company, I think, that cleans the tanks, and there is the Union Paint Co., and a few other companies of that kind down there in Whitehall Street, that seem to get a majority of the side work from the repair yards. Do you know anything about those companies?

Mr. KIRLIN. Yes.

Mr. EDMONDS. The United Marine Engineering Contracting Co., I think one of them is, and the Union Paint Co.——

Mr. KIRLIN. I do not know those particular companies by name, but I do know this, that there have been companies which do sort of what you might call subcontracting work, such as painting, cleaning the boilers, looking after the pumps, and doing minor repair work, such as electrical work on the ships and the repair of subsidiary machinery.

Mr. EDMONDS. Are those companies in competition with any other companies, or is all that work just handed to them by the dry-dock association?

Mr. KIRLIN: I think they are independent, but they are often employed by the dry-dock owners if the dry-dock owners happen to be short of paint or have not some boiler cleaners available, or for any other reason. I have never heard of anything illegal in the performance of those minor companies.

Mr. EDMONDS. Of course, you understand they can be utilized to make a great deal of money?

Mr. KIRLIN. I realize that.

Mr. EDMONDS. For instance, a dry-dock owner, if it is understood between them, can put all of his work of that character with this concern, which may only have a room and desk or only desk room, so far as active work is concerned, and may take a commission for that work.

Mr. KIRLIN. There have been repair companies during the war, so called, that did not have any dry-dock facilities, have taken contracts and then placed them with regular repair yards.

Mr. EDMONDS. This is the other way around.

Mr. KIRLIN. I merely mention that to show that people sometimes undertake obligations which they have no special facilities to carry out.

Mr. EDMONDS. There is no question these people do the work, but whether it is done as a profit proposition is the question in my mind. When you put a ship in dry dock and want to have it painted, do the dry-dock men call up 20 or 30 men and get a bid for it, in order to give an estimate that is fair, or do they do it themselves?

Mr. KIRLIN. Usually the shipowner has a contract for painting, and when the vessel is in dry dock for overhaul and she has to be painted he won't give the contract for the painting to the dry-dock man, but he gives it to the man who has the painting contract.

Mr. EDMONDS. Is not the real reason he does that because he wants to keep away from paying some of these subsidiary companies?

Mr. KIRLIN. I suppose he gets a yearly contract for painting and he gets a little better terms than the dry dock company would give.

Mr. EDMONDS. They make the statement to me that the stock of these subsidiary companies is very, very much more profitable than the stock of the steamship companies.

Mr. KIRLIN. I think that might be so of almost any steamship company at the present time. Our association is an association of Shipping Board operators. I do not know just what troubles and abuses the Shipping Board have had, but so far as our own employees are concerned, I have not heard of anything myself in the way of an abuse in connection with these companies, have you?

Mr. MARVIN. No.

Mr. EDMONDS. There was a Mr. Donovan over in New York in connection with the New York Salvage Co.—Mr. Black and Mr. Donovan. Do you know either of those gentlemen?

Mr. KIRLIN. Mr. Black I know well.

Mr. EDMONDS. Who was his associate?

Mr. KIRLIN. Mr. Black represented the London Salvage Association for many years in New York, and he is a very high-class man.

Mr. EDMONDS. Mr. Donovan was his associate, wasn't he?

Mr. KIRLIN. I do not know; I do not seem to be familiar with him.

Mr. EDMONDS. Mr. Donovan—I believe he has left now—was pretty active in all those companies. As I understand it, he was connected with the London salvage company and also these subsidiary companies; I am not sure about that, however.

Mr. KIRLIN. The London Salvage Association, as you are probably aware, is merely sort of a clearing house for insurance companies. It is not an insurance company itself, but it merely overlooks repairs and disasters for the benefit of numbers of insurance companies that may have risks on particular ships, and Mr. Black is their agent in New York.

Mr. EDMONDS. Mr. Black is still in New York, isn't he?

Mr. KIRLIN. He is still in New York, but I do not know whether he still represents the association or not. My impression is he has resigned.

Mr. EDMONDS. What I am trying to get at is this: I want to prevent any friction and lost motion on repairs. If we are going to lose a lot of money in repairs, if it is going to cost a ship thirty or forty thousand dollars more for any large quantity of repairs, we are not going to be able to run. If we are going to keep our ships running let us have it done in proper shape, and see how much subsidy we have to pay or what we have to do to keep them running.

Mr. DAVIS. Is there any question about the Federal Government having jurisdiction? Of course, we have jurisdiction over interstate and foreign commerce and over navigable streams and water; but suppose a transaction occurred, such as embodied in this act, on shore, as perhaps they ordinarily do: Is that such an incident to navigation that the Federal Government would be construed to have jurisdiction? What do you think about that?

Mr. KIRLIN. Of course, you are touching upon a very delicate matter just there; but I should be inclined to think that the act of a ship master in the taking of a bribe anywhere in the world would be a breach of his duty to his owner which would arise from a contract made with him at home, and would be punishable—it would not make any difference where he took the money.

Mr. DAVIS. But would it be punishable by the Federal Government? That is the point I am making. You see, the Government can not legally create a criminal offense except with regard to such matters as the Federal Government has jurisdiction over. Of course, under the Constitution we have jurisdiction over interstate and foreign commerce, and by reason of that we are able to enact such laws as are marine in character and our railroad laws. But when and under what theory could the Government exercise jurisdiction over strictly a land transaction between two parties? Say they are in New York City; the master of the vessel makes a purchase of supplies on shore from a dealer right there in New York City and the whole transaction is completed right there on shore, would the Government have jurisdiction to legislate in a case of that kind?

Mr. KIRLIN. It has a very intimate and close relation with commerce. You have already provided that it is unlawful to make an advance to a seaman on shore of his wages, and that has been supported by the Supreme Court of the United States. And the Supreme Court has never put any limitation that I know of on the powers of the Federal Government over foreign commerce, and I should not want to have to state where those limitations were.

Mr. DAVIS. I am not a marine lawyer, and that is the reason I ask.

Mr. KIRLIN. The authority is very broad. I will say this: That if the offense is committed on shore in Holland or Belgium, very probably this would not be a criminal offense. He would undoubtedly be liable civilly here for a breach of duty; but if the crime was committed on shore, I am inclined to think this would not reach it. It certainly is not an offense against the United States for a captain to beat a seaman on shore in a foreign port, or to beat anybody else on shore. On the high seas, yes; or anywhere within the limits of the admiralty and maritime jurisdiction on this side it it; but on the foreign shore, not.

Mr. DAVIS. I knew as a matter of course that our courts would have no jurisdiction over an offense committed in a foreign port, but I had reference to a land transaction under the provisions of this act.

Mr. HARDY. So you think even if we pass this law, a man who made this kind of a deal in Belgium could not be punished here, although he came off an American ship?

Mr. KIRLIN. My opinion is not worth very much on that, Judge, because I do not profess to be a criminal lawyer, and how far the locus of embezzlement controls jurisdiction I frankly want to admit I do not know. If it was a larceny, I should unquestionably say it could not be punished unless the larceny was committed on the ship. An embezzlement is sort of an intangible thing. It is hard to say, as a matter of law, just where embezzlement is committed; it might be committed on board ship where the captain signed the paper, or where he unlawfully withheld the money. Perhaps the embezzlement, technically, would be in the home port where he failed to account.

Mr. DAVIS. One of the principal requisites to conviction for a criminal offense is proof of venue, and in a case where it could not be proven that it was on a navigable stream or on the high seas, beyond the 3-mile limit, the question is whether the Government would have criminal jurisdiction of such an offense.

Mr. WHITE. Mr. Miller is both a criminal lawyer and an admiralty lawyer and perhaps he would like to have something to say on that subject.

Mr. MILLER. I should say jurisdiction would immediately attach when he makes an accounting; that an American vessel whose master is guilty of a fraudulent transaction which took place in Belgium or any foreign land when he makes his accounting in this country jurisdiction attaches. That is universal law. As to embezzlement cases, I may be the owner of a factory in New York and I send a man to California and he makes a contract dishonestly, by which I am injured, and comes back to me in New York and makes an accounting to me there by which I am defrauded of certain sums of money, although the transaction was actually and physically carried on in California, the crime against me is where he makes the accounting, and that is in New York, and the courts of New York would have jurisdiction. At least, that is the ordinary rule.

Mr. DAVIS. In your bill, the gravamen of the offense is not false accounting, but the solicitation and reception of the gratuity.

Mr. MILLER. But there would have to be an accounting to the steamship company, or else the steamship company would not be defrauded.

Mr. DAVIS. Still, all criminal statutes are strictly construed and here you do not make a false accounting the offense. Under the provisions of this bill, if he, under those conditions, accepted a bonus for the purpose of inducing the trade, he would be guilty whether he ever made any accounting or not. On the other hand, under your description of the offense awhile ago, regardless of the other, when he made a false accounting and withheld certain funds, that in itself would constitute an offense. I think you are very probably correct in that, but I am dealing with the phraseology of this bill. It might be well to add an additional section or provision making it an offense also if he shall render a false accounting.

Mr. MILLER. Oh, yes; that would be in the wisdom of the committee.

Mr. DAVIS. And then they could frame their count under either horn of the dilemma, and perhaps they would have two counts in the indictment, the first charging the reception of the bonus, and then, second, the rendering of a false accounting.

Mr. MILLER. Very well; it can be done very easily and would cover both contingencies which you suggest.

Mr. KIRLIN. I think that would be a very wise provision.

Mr. MILLER. I think it would be a very good one. There is another little thing in connection with this bill. I drew this very hurriedly, as you gentlemen can see. This bill lays the odium aimed at on the master of the steamship or other person having authority to contract for repairs. It occurs to me it might be well, if the committee desired, to reach the other fellow and make it equally an offense for the owner of a dry dock, marine railway, or person to offer a bribe to the master; make it both ways, you know.

Mr. KIRLIN. Isn't it both ways now?

Mr. MILLER. No.

Mr. KIRLIN. I thought it was—" and whoever shall receive, solicit, offer, give, or pay."

Mr. MILLER. That is only one, and I doubt very much by the strict construction criminal statutes always receive at the hands of the courts whether or not the provisions of this bill would be broad enough to catch a rascally dry-dock owner or person who approaches the master and induces the master to be bribed—the bribe offerer, in other words. I just throw that suggestion out to the committee so as to make it work both ways.

Mr. KIRLIN. I think it would be well for the committee to heed that suggestion, because those gratuities almost always result from competition of people in the business to get the business.

Mr. MILLER. It is two classes of rascals meeting.

Mr. KIRLIN. It is the competition to get the business which is the provocation generally preceding the granting of the gratuity.

Mr. MILLER. Yes. Very often trading companies in the ports furnishing those supplies and rival repair men enter into competition in bidding on the graft. One will offer the captain 2 per cent and another fellow will say, "I will beat that; I will make it 3," and frequently they dicker backward and forward. I would like to catch the rascal attempting to bribe the master as well as the captain who is willing to be bribed. I just throw that suggestion out for the committee's consideration.

Mr. EDMONDS. I think that is a very good suggestion and a very wise one.

Mr. HARDY. After the word "receive" there you would just put in the words "or for any person to give or offer."

Mr. MILLER. You have had considerable experience, Judge Hardy, in construing criminal statutes, and doesn't it occur to you it would be better to make the act in the alternative—or any person who furnishes repairs, supplies, and necessaries for vessels, or the owner of any dry dock or marine railway who shall offer or attempt to bribe any captain or person having charge of such ship. Doesn't it occur to you it will be safer to make it in the alternative?

Mr. HARDY. There is only one thing against that, and I do not know whether that amounts to anything or not; you will possibly destroy the only witness you can use in a conviction of the bribe taker if you make him equally guilty of an offense, because if it is offered and taken then both are guilty under your changed suggestion.

Mr. MILLER. Yes; the only chance would be to play one against the other in a case like that.

Mr. HARDY. That is sometimes done, and I suppose, under the law of accomplices both the giver and the taker would be guilty anyhow.

Mr. MILLER. I suppose so.

Mr. HARDY. If a man pays another to commit an offense, isn't he also guilty of the offense?

Mr. MILLER. Oh, yes; as a general proposition.

Mr. HARDY. So he would be an accomplice or a principal, whichever you choose; even though your law made the bribe taker guilty, the bribe giver would be an accomplice.

Mr. MILLER. But you might find trouble in catching an accomplice under a law written as this one is, because the law does not say any person who shall aid, counsel, abet, or assist in the same.

Mr. HARDY. Haven't we a general law in the United States statutes that any person aiding, abetting, or assisting in the commission of the offense is guilty of the offense and subject to punishment?

Mr. MILLER. That is universally the rule in the State laws——

Mr. HARDY. It is the universal rule in the State laws?

Mr. MILLER. I can not say as to the Federal law.

Mr. HARDY. I think the only exception is the man who says "Here is a drink," and you buy it and pay for it. You are not guilty and he is.

Mr. MILLER. The judge is getting into a practical application of it that I do not know anything about.

Mr. HARDY. I do not know anything about the practical application of it. I do not think it would do any harm to put that provision in here, because I do not think you are going to get any men except with a corkscrew anyhow.

Mr. DAVIS. The way that generally results, in the absence of any other proof, the district attorney could use as a witness the one against the other, possibly under a promise of immunity.

Mr. MILLER. One reason I drafted this law with the presence of laws in various States (I am not acquainted with the laws of any State except my own), we have in my own State what we call an anti-graft statute that covers everything in the shape of padded accounts and all that sort of thing, and I drew this law for the purpose of throwing into the Federal courts these specific classes of cases where ships are concerned, for the reason that a State court is of limited jurisdiction and a witness gets outside of your county and especially outside of your State and he is gone. A ship comes into my port or into the port of San Francisco, say, and the master commits an act in violation of this statute; then, it sets sail and goes to Portland, Oreg., out of the jurisdiction of the State courts of California and you can not touch it. But if you throw it into the United States courts, you can. And that is my purpose in pressing this kind of a bill.

Mr. HARDY. Is there any opposition to the enactment of this legislation?

The CHAIRMAN. I have not heard of any.

Mr. HARDY. I think with the amendments suggested by Mr. Miller, so as to make it verbally and literally applicable to the briber as well as the bribee, I am ready to vote on it now.

Mr. WHITE. Mr. Kirlin, you made some reference to inserting language in line 8. I have just drawn this up hurriedly and submit it to you: "For the purpose of inducing" and then I insert "in fraud of the owner or operator of such vessel."

Mr. KIRLIN. Yes.

Mr. WHITE. Would that meet your point?

Mr. KIRLIN. That would meet my point.

Mr. MILLER. Any language in here, whereby the owner of the vessel is defrauded, of course that would become, then, an element of proof.

Mr. KIRLIN. Yes.

Mr. DAVIS. Why not the use one word "fraudulently" if you want to carry out that idea?

Mr. HARDY. Insert right after the word "to," in line 6, the word "fraudulently"—to fraudulently receive or solicit, either directly or indirectly.

Mr. KIRLIN. I said "wrongfully"; I think "fraudulently" is the better word.

Mr. MILLER. It is a narrow word, you know.

Mr. EDMONDS. You are not going to forget to put in the words "construing or approving"?

Mr. CHINDBLOM. That is at the end of line 8.

Mr. EDMONDS. You are not going to forget to put those words in there?

Mr. WHITE. There was a thought in my mind—I had the same general idea in mind as Mr. Chindblom, but I had a little different language. I was going to suggest "or of influencing the interpretation or execution." I wonder if we ought not to have the word "execution" of a contract in there.

Mr. CHINDBLOM. That is part of the making.

Mr. WHITE. Is it?

Mr. MILLER. Oh, no.

Mr. CHINDBLOM. Oh, yes.

Mr. MILLER. You can make a contract and never execute it.

Mr. CHINDBLOM. Then it is not a contract.

Mr. MILLER. It is an unexecuted contract.

Mr. CHINDBLOM. If it is a contract by which the owner or agent is defrauded, then you have made a contract. You are not speaking here of unexecuted contracts or attempted contracts?

Mr. MILLER. That is not my idea.

Mr. CHINDBLOM. You are talking here about real contracts and "making" the contracts cover the whole thing, in my opinion.

Mr. WHITE. I would say, instead of "execution," "or performance of the contract."

Mr. CHINDBLOM. You mean the carrying of it out, not the mere signing of it.

Mr. WHITE. Not the signing of it. I take the word "making" to comprehend the drafting and signing of it, and I simply use the word "execution," not in a technical sense.

Mr. CHINDBLOM. Making a contract, I think, includes every element in the actual entering into the contract. It may be an oral contract, and then there would be no writing about it; but it would still be a verbal contract.

Mr. EDMONDS. What I was trying to get at there was this, that if these subsidiary companies are used for expanding the price of repairs—and I have a very strong suspicion in my mind about them from reading these reports; their general get-up indicates a community of interest that looks very pleasant—then they ought not to exist, and we ought to put them out of business just the same as to put the captain out of business for taking a gratuity.

Mr. KIRLIN. Yes; I agree to that.

Mr. EDMONDS. If we can only put it in this bill some way or other——

Mr. KIRLIN. On the other hand, I do not want to do anything to operate oppressively against these small companies that are honest.

Mr. EDMONDS. Not at all; I do not want to do anything to operate against a fair company.

Mr. MILLER. I would like to have the gentlemen of the committee observe the penalty of this statute—a fine of not less than $1,000 and of not more than $5,000, or by imprisonment for not less than six months and not more than twelve months, or both. I just throw out the suggestion whether that is excessive.

Mr. EDMONDS. I do not think it is considering the cost of things nowadays.

Mr. KIRLIN. The only thing is it makes it more difficult to get convictions. It would be an awfully hard thing to get a jury to convict a ship master in a case of this kind where the penalty was excessive.

Mr. MILLER. You might say "fine not exceeding $1,000 or imprisonment."

Mr. KIRLIN. I think so.

Mr. DAVIS. This offense is really tantamount to embezzlement and the penalty for embezzlement under the Federal law is imprisonment in the penitentiary, I think, for from one to five years. So it is not too severe for the offense. The only question is whether it is too severe to secure convictions. It might be his commission would be more than $1,000. In other words, he might be able to do as the bootleggers do, where the courts are so lenient—they only have to pay a fine, I think, of $200 and they pay the fine and then are able to make it back in a day of two.

Mr. KIRLIN. If he found he had embezzled more than $1,000, the judge would probably put him in jail.

(The committee thereupon adjourned.)

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END OF
TITLE